No. 14-86

In the Supreme Court of the United States

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PETITIONER

v.

ABERCROMBIE & FITCH STORES, INC.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: JULY 25, 2014
CERTIORARI GRANTED: OCT. 2, 2014

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UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Docket No. 11-5110

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PLAINTIFF-APPELLEE

v.

ABERCROMBIE & FITCH, AN OHIO CORPORATION, D/B/A
ABERCROMBIE KIDS, DEFENDANT-APPELLANT

DOCKET ENTRIES

DATE	PROCEEDINGS
7/26/11	[9887749] Civil case docketed. Preliminary record filed. DATE RECEIVED: 07/26/2011. Docketing statement, transcript order form and notice of appearance due 08/09/2011 for Abercrombie & Fitch. Notice of appearance due on 08/09/2011 for Equal Employment Opportunity Commission.
	* * * * *
12/8/11	[9925028] Appellant/Petitioner's brief filed by Abercrombie & Fitch. 7 paper copies to be provided to the court. Served on 12/08/2011 by ECF/NDA. Oral argument requested? Yes. MAK
12/8/11	[9925362] Appendix filed by Appellant Abercrombie & Fitch. Original and 1 copy. Appendix pages: 724. Number of volumes: 6. Hard-copy only. Served on 12/08/2011. Manner of Service: US mail.

DATE	PROCEEDINGS
	* * * * *
1/20/12	[9935672] Appellee/Respondent's brief filed by EEOC. 7 paper copies to be provided to the court. Served on: 01/20/2012. Manner of service: email. Oral argument requested? Yes.—[Edited 05/02/2012 by SDS to attach errata sheets to entry] JMT
1/20/12	[9936725] Appellee's Supplemental Appendix filed by Appellee EEOC. Original and 1 copy. Appendix pages: 184. Number of volumes: 1. Hardcopy only. Served on 01/20/2012. Manner of Service: US mail.
	* * * * *
2/10/12	[9941506] Appellant/Petitioner's reply brief filed by Abercrombie & Fitch. 7 paper copies to be provided to the court. Served on 02/10/2012. Manner of Service: ECF/NDA. [11-5110] MAK
	* * * * *
5/7/12	[9965072] Case argued by Mark Knueve for appellant; James Tucker for appellee and submitted to Judges Kelly, Ebel and Holmes. [11-5110]
	* * * * *
10/1/13	[10113039] Reversed. Terminated on the merits after oral hearing. Written, signed, published. Judges Kelly, Ebel (concurring in part and dissenting in part) and Holmes (authoring). Mandate to issue. [11-5110]
10/1/13	[10113043] Judgment for opinion filed. [11-5110]

DATE	PROCEEDINGS

* * * * *

12/4/13 [10130255] Petition for rehearing, for rehearing en banc filed by EEOC. Original and 12 copies. Served on 12/04/2013. Manner of Service: email. [11-5110]

12/6/13 [10131011] Order filed by Judges Kelly, Ebel and Holmes directing appellant to file a response to petition for rehearing, petition for rehearing en banc. Response due on 12/16/2013 for Abercrombie & Fitch. Served on 12/06/2013. [11-5110]

* * * * *

12/10/13 [10132095] Amicus Curiae brief filed by National Employment Lawyers Association in support of EEOC's petition for rehearing. 7 paper copies to be provided to the court. Served on 12/10/2013. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [11-5110]—[Edited 12/12/2013 by SLS to add filing party to docket text.]—[Edited 02/26/2014 by SLS to show the brief as filed.] MH

* * * * *

12/11/13 [10132439] Amicus Curiae brief filed by General Conference of Seventh-Day Adventists, National Association of Evangelicals, Christian Legal Society, American Civil Liberties Union Foundation, Baptist Joint Committee for Religious Liberty, American Jewish Committee, and The Sikh Coalition. 12 paper copies to be provided to the court.

DATE	PROCEEDINGS
	Served on 12/11/2013. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [11-5110]—[Edited 12/12/2013 by SLS to correct parties in docket text.]—[Edited 02/26/2014 by SLS to show the brief as filed.] CMK
12/16/13	[10133613] Response filed by Abercrombie & Fitch to Appellee's Petition for Rehearing En Banc. Served on 12/16/2013. Manner of Service: email. This pleading complies with all required (privacy, paper copy and virus) certifications: Yes. [11-5110] DJC
2/26/14	[10152461] Order filed by Judges Briscoe, Kelly, Lucero, Hartz, Tymkovich, Gorsuch, Holmes, Matheson, Bacharach and Phillips regarding appellee's petition for rehearing en banc, the response, and the two proposed amicus briefs. The request of the proposed amicus parties to file briefs on rehearing is granted. The implicit request for panel rehearing is denied. Judge Ebel would grant panel rehearing. A poll was requested and the active judges split evenly. Accordingly, the petition for rehearing en banc is denied. Chief Judge Briscoe, as well as Judges Lucero, Matheson, Bacharach and Phillips voted to grant en banc rehearing. Judge Hartz has written separately. [11-5110]
3/6/14	[10154977] Mandate issued. [11-5110]
5/22/14	[10178276] Supreme Court order extending the time to file a petition for a writ of certiorari to

DATE	PROCEEDINGS
	6/26/14 filed. [11-5110]
6/19/14	[10185099] Supreme Court order granting further extension of time 7/25/14. [11-5110]
7/31/14	[10195280] Petition for writ of certiorari filed by Equal Employment Opportunity Commission on 07/25/2014. Supreme Court Number 14-86. [11-5110]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA
(Tulsa)

Civil Docket No. 4:09-cv-00602-GKF-FHM

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PLAINTIFF

v.

ABERCROMBIE & FITCH STORES, INC., AN
OHIO CORPORATION DOING BUSINESS AS ABERCROMBIE
KIDS, DEFENDANT

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
9/17/09	2	COMPLAINT with Jury Demand against Abercrombie & Fitch Stores, Inc. by Equal Employment Opportunity Commission (Robertson, Michelle) (Entered: 09/17/2009)
		* * * * *
11/24/09	7	ANSWER (Re: 2 Complaint) by Abercrombie & Fitch Stores, Inc. (Brightmire, Kristen) (Entered: 11/24/2009)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
4/15/11	50	MOTION for Summary Judgment by Abercrombie & Fitch Stores, Inc. (With attachments) (Fungsang, Joseph) (Entered: 04/15/2011)
		* * * * *
4/26/11	68	MOTION for Partial Summary Judgment *with brief in support* by Equal Employment Opportunity Commission (With attachments) (Lee, Jeff) (Entered: 04/26/2011)
		* * * * *
5/6/11	77	RESPONSE in Opposition to Motion (Re: 50 MOTION for Summary Judgment) by Equal Employment Opportunity Commission; (With attachments) (Seely, Barbara) (Entered: 05/06/2011)
		* * * * *
5/6/11	86	RESPONSE in Opposition to Motion (Re: 68 MOTION for Partial Summary Judgment *with brief in support*) by Abercrombie & Fitch Stores, Inc., (With attachments) (Fungsang, Joseph) (Entered: 05/06/2011)
		* * * * *
5/20/11	97	REPLY to Response to Motion (Re: 68 MOTION for Partial Summary Judg-

DATE	DOCKET NUMBER	PROCEEDINGS
		ment *with brief in support*) by Equal Employment Opportunity Commission; (With attachments) (Hope, Jennifer) (Entered: 05/20/2011)
		* * * * *
5/20/11	103	REPLY to Response to Motion (Re: 50 MOTION for Summary Judgment) by Abercrombie & Fitch Stores, Inc.; (Fungsang, Joseph) (Entered: 05/20/2011)
		* * * * *
6/29/11	118	MINUTES of Proceedings—held before Judge Gregory K Frizzell: Motion Hearing held on 6/29/2011, striking/terminating deadline(s)/ Hearing(s) (Re: 50 MOTION for Summary Judgment, 68 MOTION for Partial Summary Judgment *with brief in support*) (Court Reporter: Glen Dorrough) (hbo, Dpty Clk) (Entered: 06/29/2011)
6/30/11	119	TRANSCRIPT of Proceedings (Unredacted) of motion hearing (an excerpt) held on 06/29/2011 before Judge Gregory K Frizzell (Court Reporter: Glen Dorrough) (Pages: 1-11). NOTICE RE REDACTION OF TRANSCRIPTS: A party must file a Tran-

DATE	DOCKET NUMBER	PROCEEDINGS
		script Redaction Request within 21 calendar days. If a party fails to request redaction, this unredacted transcript may be made electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may view the transcript at the court public terminal at no charge or may purchase a copy from the court reporter. (Re: 118 Minutes of Motion Hearing, Striking/ Terminating Deadline(s)/Hearing(s)) (grd, Crt Rptr) Modified on 9/29/2011 to remove transcript access restriction (a-hc, Dpty Clk). (Entered: 06/30/2011)
		* * * * *
7/5/11	124	TRANSCRIPT of Proceedings (Unredacted) of motion hearing held on 06/29/2011 before Judge Gregory K Frizzell (Court Reporter: Glen Dorrough) (Pages: 1-94). NOTICE RE REDACTION OF TRANSCRIPTS: A party must file a Transcript Redaction Request within 21 calendar days. If a party fails to request redaction, this unredacted transcript may be made electronically available to the

DATE	DOCKET NUMBER	PROCEEDINGS
		public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may view the transcript at the court public terminal at no charge or may purchase a copy from the court reporter. (Re: 118 Minutes of Motion Hearing, Striking/Terminating Deadline(s)/Hearing(s)) (grd, Crt Rptr) Modified on 10/3/2011 to remove transcript access restriction (a-hc, Dpty Clk). (Entered: 07/05/2011)
		* * * * *
7/13/11	152	OPINION AND ORDER by Judge Gregory K Frizzell; denying 50 Motion for Summary Judgment; granting 68 Motion for Partial Summary Judgment (hbo, Dpty Clk) (Additional attachment(s) added on 7/13/2011: # 1 "main document") (hbo, Dpty Clk). Modified on 7/13/2011 to attach correct order (hbo, Dpty Clk). (Additional attachment(s) added on 7/18/2011: # 2 ""main document"") (hbo, Dpty Clk). Modified on 7/18/2011 to correct clerical error only (hbo, Dpty Clk). (Entered: 07/13/2011)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
7/18/11	161	MINUTES of Proceedings—held before Judge Gregory K Frizzell: Voir Dire/Jury Selection began (Court Reporter: Glen Dorrough) (hbo, Dpty Clk) (Entered: 07/18/2011)
7/18/11	162	MINUTES of Proceedings—held before Judge Gregory K Frizzell: Voir Dire/Jury Selection held on 7/18/2011 (Court Reporter: Glen Dorrough) (hbo, Dpty Clk) (Entered: 07/18/2011)
7/18/11	163	MINUTES of Proceedings—held before Judge Gregory K Frizzell: Jury Trial began (Court Reporter: Glen Dorrough) (hbo, Dpty Clk) (Entered: 07/18/2011)
7/18/11	164	MINUTES of Proceedings—held before Judge Gregory K Frizzell: Jury Trial held, setting/resetting deadline(s)/ hearing(s): (Jury Trial set for 7/19/2011 at 09:30 AM before Judge Gregory K Frizzell) (Court Reporter: Glen Dorrough) (hbo, Dpty Clk) (Entered: 07/18/2011)
		* * * * *
7/19/11	167	MINUTES of Proceedings—held before Judge Gregory K Frizzell: Jury Trial held, setting/resetting deadline(s)/ hearing(s): (Jury Trial set for

DATE	DOCKET NUMBER	PROCEEDINGS
		7/20/2011 at 09:00 AM before Judge Gregory K Frizzell) (Court Reporter: Glen Dorrough) (hbo, Dpty Clk) (Entered: 07/20/2011)
7/20/11	169	JURY INSTRUCTIONS by Judge Gregory K Frizzell (hbo, Dpty Clk) (Entered: 07/21/2011)
7/20/11	170	JURY VERDICT for Plaintiff and against Defendant (hbo, Dpty Clk) (Entered: 07/21/2011)
		* * * * *
7/21/11	171	JUDGMENT by Judge Gregory K Frizzell, entering judgment in favor of Plaintiff against Defendant (terminates case) (hbo, Dpty Clk) Modified on 3/11/2014—**VACATED per 201** (sac, Dpty Clk). (Entered: 07/21/2011)
7/21/11		* * * Civil Case Terminated (see document number 171) (sac, Dpty Clk) (Entered: 07/22/2011)
7/25/11	172	NOTICE OF APPEAL to Circuit Court (paid $455 appeal fee; receipt number 1085-887180) (Re: 171 Judgment, Entering Judgment 152 ORDER AND OPINION 143 MINUTES) by Abercrombie & Fitch Stores, Inc. (Brightmire, Kristen) Modified on 7/26/2011 to create link to 152

DATE	DOCKET NUMBER	PROCEEDINGS
		and 143 (sac, Dpty Clk). (Entered: 07/25/2011)
7/26/11	173	PRELIMINARY RECORD Sent to Circuit Court (Re: 172 Notice of Appeal to Circuit Court,) (With attachments) (sac, Dpty Clk) (Entered: 07/26/2011)
		* * * * *
8/2/11	176	Unopposed MOTION to Stay *Execution of Judgment* by Abercrombie & Fitch Stores, Inc. (Fungsang, Joseph) (Entered: 08/02/2011)
8/3/11	177	ORDER by Judge Gregory K Frizzell *Stay of Execution of Judgment*; granting 176 Motion to Stay (hbo, Dpty Clk) (Entered: 08/03/2011)
		* * * * *
10/4/11	191	CLERK'S RECORD on Appeal Sent to Circuit Court (Re: 172 Notice of Appeal to Circuit Court,) (s-srt, Dpty Clk) (Entered: 10/04/2011)
		* * * * *
10/1/13	194	DECISION from Circuit Court reversing the Decision of the District Court (awaiting mandate) (Re: 172 Notice of Appeal to Circuit Court,) (sdc, Dpty Clk) (Entered: 10/01/2013)

DATE	DOCKET NUMBER	PROCEEDINGS
10/1/13	195	ORDER from Circuit Court *entering Judgment* (Re: 172 Notice of Appeal to Circuit Court,) (sdc, Dpty Clk) (Entered: 10/01/2013)
		* * * * *
3/6/14	198	MANDATE from Circuit Court reopening case (Re: 194 Decision from Circuit Court, 172 Notice of Appeal to Circuit Court,) (sdc, Dpty Clk) (Entered: 03/06/2014)
		* * * * *
3/10/14	201	JUDGMENT by Chief Judge Gregory K Frizzell *Judgment on Remand*, entering judgment in favor of Defendant against Plaintiff (terminates case) (Re: 195 Order from Circuit Court, 194 Decision from Circuit Court, 198 Mandate from Circuit Court) (hbo, Dpty Clk) (Entered: 03/10/2014)
3/10/14		* * * Civil Case Terminated (see document number 201) (sac, Dpty Clk) (Entered: 03/11/2014)
		* * * * *
3/28/14	205	Unopposed MOTION to Stay *Execution of Judgment* by Equal Employment Opportunity Commission (Lee, Jeff) (Entered: 03/28/2014)

DATE	DOCKET NUMBER	PROCEEDINGS
3/31/14	206	ORDER by Chief Judge Gregory K Frizzell; granting 205 Motion to Stay (Re: 201 Judgment,,,, Entering Judgment,) (hbo, Dpty Clk) (Entered: 03/31/2014)
		* * * * *
5/22/14	208	LETTER from Circuit Court regarding Supreme Court order extending the time to file a petition for a writ of certiorari to 6/26/14 (Re: 172 Notice of Appeal to Circuit Court,) (sdc, Dpty Clk) (Entered: 05/22/2014)
6/19/14	209	LETTER from Circuit Court regarding Supreme Court order granting further extension of time (Re: 172 Notice of Appeal to Circuit Court,) (sdc, Dpty Clk) (Entered: 06/19/2014)
7/13/14	210	LETTER from Circuit Court stating that the Petition for Writ of Certiorari has been filed (U.S. Supreme Court Case Number: 14-86) (Re: 172 Notice of Appeal to Circuit Court,) (sc, Dpty Clk) (Entered: 07/31/2014)

UNITED STATES DISTRICT COURT
FOR THE NOURTHERN DISTRICT OF OKLAHOMA

No. 09-CV-602-GKF-FHM

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PLAINTIFF

v.

ABERCROMBIE & FITCH STORES, INC., AN OHIO CORPORATION D/B/A ABERCROMBIEKIDS, DEFENDANT

Jan. 4, 2011

DEPOSITION OF SAMANTHA ELAUF

---

* * * * *

[4]

(Whereupon; the deposition began at 8:50 a.m.)

SAMANTHA ELAUF

having first been duly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. KNUEVE:

Q. Can you state your full name?

A. Samantha Iman Elauf.

* * * * *

[26]

Q. As I understand, there's—well, would you agree with me that there is some—that different Muslims believe different things about what they have to wear, different Muslim women believe different things about what they have to wear or no?

A. Well, every Muslim believes the same as in what the Quran says, but at the same time there's different levels of what they may think is priority and what someone else may think is not priority, like not necessarily priority.

Q. What does the Quran say about how women should dress?

A. Modest.

Q. Would you agree that the Quran does not specifically require a headscarf?

A. It does say that women are supposed to cover their hair.

[27]

Q. Okay. You're positive about that?

A. No, I'm not 100 percent positive but—

Q. Okay. Now, I read that some—at least some Muslim women believe that they should cover everything except for the hands and the face. Is that what you believe?

A. No, not fully, but that's for the most part everything that is showing, my hands and my—

Q. Where do you differ from that?

A. I guess the way that I wear my headscarf isn't necessarily the same as other girls, whereas my neck shows.

Q. You testified that the Quran requires modesty in dress for women.

A. Modesty, yes.

* * * * *

[31]

* * * * *

Q. And how long have you been wearing a headscarf?

A. Since I was thirteen.

* * * * *

[32]

* * * * *

Q. And what led you to your decision to begin wearing a headscarf?

A. I just felt like it was—one day I just decided that I wanted to start wearing a headscarf to represent who I was as far as my faith.

Q. Have there been periods of time—so it was seven years ago?

A. Yes, because I am twenty.

Q. So in that seven years have you continuously worn the headscarf?

A. Yes. There hasn't been a day where I went out in public and haven't worn a headscarf.

* * * * *

[44]

* * * * *

Q. What made you decide to apply at Abercrombie?

A. I was working at Limited Too, and I was kind of burned out on the job just because I worked there for a while so I wanted a new job, and my friend worked there, so I thought it would be fun.

Q. And your friend was Farisa?

A. Farisa.

Q. Had Farisa worked with you at Limited Too?

A. No.

Q. Did you wear your headscarf when you were employed at Limited Too?

A. Yes.

* * * * *

[45]

* * * * *

Q. So what did Farisa say about Abercrombie?

A. Well, she also had worked there for a while and she just told me she liked working there and I [46] should come apply there.

Q. Did you know anybody else that was working there?

A. Yeah. I knew some of the sales associates.

Q. Who else did you know?

A. There was a boy named Andrew and Spencer, and there was some other people but it wasn't I knew them like personally. Just whenever I would go in there, I would see them and talk to them.

Q. Now, at this time you were in high school?

A. I had just graduated high school because it was the summer of 2008, so I just graduated.

Q. Did you know anybody else who was Muslim that was working at Abercrombie?

A. Not that I know of, not at the one I applied at.

Q. Okay. Now by this point, how did you know Kalen?

A. I didn't know him personally. It was just by me going in there because me and Farisa both worked at the mall for a while, so if she were to go on break or if I were to go on break, we would meet up with each other, but I never knew him personally. It was just me going into Abercrombie.

Q. Okay. So is it fair to say that the people [47] that you knew at Abercrombie before you applied were Farisa, you'd had this one conversation with Kalen, and then you knew Andrew and Spencer but it sounds like not very well?

A. I knew them from Farisa, yeah, I knew them from Farisa.

Q. Did Farisa tell you that there was a look policy at Abercrombie?

A. No. She told me about what they were supposed to wear as far as like how every so often they would have color stories that they were supposed to follow but not that there was a policy.

Q. Do you know what position Farisa held?

A. Sales associate, which they called model.

Q. What did you—had you ever shopped at Abercrombie before?

A. Yeah, I did shop at Abercrombie.

Q. Okay. So you knew a little bit about the style of clothing?

A. What kind of clothes they would sell, yes.

Q. And they sell clothes that are form fitting?

A. Yeah.

Q. And they sell clothes that are body conscious?

A. Not necessarily everything is body conscious. I don't know. I mean they would sell like [48] button-up shirts, tank tops that you are supposed to wear underneath them, zip-up jackets, sweatshirts, long-sleeved shirts, t-shirts. I mean, I understand that they're all tight, but it's not anything I wouldn't be able to wear.

Q. Besides wearing the headscarf, do you wear certain clothes or clothes in a certain way because of your religion?

A. I try not to wear clothes too tight but I still wear normal clothes.

Q. Do you wear clothes that would reveal, for example, your arm from your elbow to your wrist?

A. No. I try to cover the majority of my arm.

Q. And you mentioned earlier that you wouldn't wear skirts or shorts?

A. I would wear a skirt but I usually wear leggings with them. Like I work at Forever 21 now, and like we have tutu days where we wear a tutu skirt. I would wear like tights under my tutu skirt.

* * * * *

[49]

Q. Okay. So we are talking a little bit about Abercrombie before the break, and I think you testified that you had shopped at Abercrombie before you applied for employment there.

A. Uh-huh.

Q. Yes?

A. Yes.

Q. Have you ever bought any clothes from Abercrombie?

A. Yes.

Q. Can you—did you buy clothes often from Abercrombie?

A. The majority of that clothing I would buy from there was their jeans. I liked the way their jeans fit,

and I bought of lot of their sweatshirts at Abercrombie and tank tops from there and their T-shirts, but it wasn't like my entire closet was Abercrombie.

Q. Right. Do you still shop at Abercrombie?

A. No.

Q. When's the last time you've been in an Abercrombie store?

A. The last time? I haven't been in an Abercrombie store since this case was filed.

Q. Okay. Now, you knew—Farisa told you her [50] job position was model?

A. Yes.

Q. And she also told you that she had to wear certain clothes in the position?

A. Not certain clothes, just certain like colors, like you have to wear navy blue and white or cream and brown, but it wasn't like certain pieces of clothing.

Q. Did she tell you that part of the job of the model was to model the Abercrombie style?

A. She told me that she was supposed to look like their clothes but she didn't have to wear Abercrombie clothing.

Q. Okay. So she was supposed to look like the Abercrombie style?

A. She was supposed to wear things like they would sell, yes.

Q. Are you aware—let me strike that. Were you aware at the time that Abercrombie did no advertising other than the in-store experience?

A. Say it again.

Q. Have you ever seen a commercial for Abercrombie on the television?

A. No.

Q. Have you ever seen an ad for Abercrombie in a [51] newspaper or a magazine?

A. Not before I applied there.

Q. Okay. Did anybody tell you that Abercrombie did no advertising other than what customers saw when they walked into the store?

A. No, I never heard that.

Q. Did you know anything else about Abercrombie before you applied?

MS. SEELY: Objection, vague and ambiguous.

Q. You can answer the question.

A. Did I know anything about Abercrombie, like as in a company or as in what clothes they would sell or what?

Q. Either one.

A. I knew it was a fashion-forward store, but that was about it.

Q. You applied at an electronic kiosk?

A. In the upstairs one, so the Abercrombie Fitch, yes.

Q. And do you recall that there was a job description on the kiosk for the model position?

A. It said model, yeah.

Q. Do you recall a description of the job on the kiosk?

A. No.

[52]

Q. Let's get this marked. Okay. Miss Elauf, you have Exhibit 1 there in front of you.

A. Okay.

Q. Is this a copy of your application for employment with Abercrombie?

A. Yes.

* * * * *

[53]

* * * * *

Q. How long—do you remember how long after you applied you were interviewed?

A. It wasn't very long after.

Q. Did anybody talk to you when you were applying at the kiosk?

A. No. I was just greeted when I came into the [54] store but not while I was filling out the application.

Q. Did anybody talk to you after you submitted the application in the store?

A. No.

* * * * *

[56]

* * * * *

Q. So you submitted the application. What was the first conversation you had with somebody after you submitted the application?

A. It was with Farisa basically just about the application, and then she told me she was going to talk to Heather and see as soon as like they could do the interview. That's why I'm not sure if I had the interview when it said on the application or if Heather called me to come in for an interview.

Q. Okay. Before—you eventually had an interview with Heather Cook?

A. Yes.

Q. Before the interview with Heather Cook, had you talked with anybody about whether you would be allowed to wear a headscarf while working at Abercrombie?

A. The only thing that Farisa had talked to me about was they had no black policy, and I usually did wear a black headscarf, so she had asked the managers if it was okay if I wore a black headscarf.

Q. Okay. So did you know before your interview [57] that Abercrombie's practice was no black clothes were allowed?

A. Yeah, I knew they weren't allowed to wear black.

Q. And you knew that before you were interviewed?

A. Yes.

Q. And then you discussed that with Farisa?

A. Discussed what we weren't allowed to wear black?

Q. Right.

A. Yeah. She told me they weren't allowed to wear black.

Q. And she told you that she discussed that with somebody else?

A. Yeah. She told me that she asked Heather if it was okay if I wore a black headscarf, and they just said, oh, she would probably have to wear a different color, which I was fine with.

Q. Okay. So Farisa told you she had a conversation with Heather Cook?

A. Yes.

Q. And Farisa told you that Heather said she would have to wear a different color than black?

A. Yes.

Q. Did Farisa tell you anything else about this [58] conversation with Heather?

A. No.

Q. Did you ever talk to Heather about that conversation with Farisa?

A. No.

Q. Okay, and did you ever see anything—your only source of knowledge about this conversation between Farisa and Heather is what Farisa told you?

A. As far as the black—wearing a black headscarf?

Q. Right. This whole conversation about it.

A. Yeah, I wasn't there.

Q. You don't have any other independent knowledge about that conversation; correct?

A. Right.

Q. I'm going to show this document to you and we may get it marked later. There is a portion in there that's highlighted, which states job description. Did you see that on the kiosk when you applied?

A. I don't remember.

Q. So you might have seen it but you just don't remember; is that true?

A. Yeah, it may have been there but I don't remember seeing it.

[59]

Q. Okay. Did you ever get a handbook from Abercrombie?

A. No.

Q. Did Farisa ever show you a handbook?

A. No.

Q. Did you ever—do you know that Abercrombie has a look policy?

A. I do now.

Q. Okay. Before you applied, did you know Abercrombie had a look policy?

A. No.

Q. Did you—have you ever seen the look policy?

A. After the case was filed, yes.

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[61]

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Q. Okay. What did she tell you about the position?

A. Basically what I would be doing and the shifts.

Q. Did she tell you that in the model position that you would be modeling this Abercrombie style?

A. I think so, yes.

Q. Did she tell you that there was a look policy—in the opening script, did she tell you that there was a look policy that applied?

A. No, she never said anything about a look policy.

Q. Did she say you would have to wear the style of clothes that Abercrombie sold?

A. She told—I remember she told me what I was [62] wearing that day would be fine but I would just have to wear a different color scarf because I think I was wearing a black scarf and I was wearing black sandals, and you weren't allowed to wear black shoes or—

Q. Okay. It's your testimony under oath that Heather told you what you were wearing that day would be fine?

A. I'm pretty sure, yes.

Q. Well, when you say you're pretty sure, I'm asking you do you specifically remember that?

A. I don't want to say I'm 100 percent sure, but I know I was told that it was fine.

Q. Well, remember, you had a conversation with Farisa where Farisa said that it would be fine.

MS. SEELY: Objection, vague and ambiguous. What is it?

MR. KNUEVE: The headscarf.

A. No. I'm talking about my outfit, like my clothes I was wearing.

Q. Okay. Well, tell me exactly what you remember that Heather said.

A. In the interview?

Q. Uh-huh.

A. Well, I remember her telling me about the job [63] position and then asking me about my job that I had at Limited Too, just like what my responsibilities were, and then she asked me what diversity meant to me, and she told me how they weren't supposed to wear a lot of makeup, they were supposed to look natural, and they weren't allowed to wear fingernail polish. Those are the things I'm 100 percent sure.

Q. Okay, and you went to the interview wearing a headscarf?

A. Yes.

Q. And the headscarf was black?

A. Yes.

Q. Even though Farisa had told you that you would not be allowed to wear black?

A. Yes.

Q. During the interview, you never discussed the fact that you were Muslim?

A. No.

Q. She never asked you whether you were Muslim?

A. Nope.

Q. Did she ask you if you could ask—did she tell you that you could ask any questions during the interview?

A. She asked me if I had any questions at the end.

[64]

Q. Did you tell her you had any questions?

A. Nope.

Q. Okay. Turn to Page 8 of Exhibit 2.

MS. SEELY: Are you talking about Bates stamp No. 21?

MR. KNUEVE: Yes.

Q. And you'll see there's a section there entitled closing statement?

A. Oh okay.

Q. And there's in particular there's a section on the look policy, and I'd like you to read that and let me know when you've finished.

A. (Witness complied).

Q. Did Heather read that during the interview?

A. I don't know if she read it or if she just read parts of it.

Q. Certainly she talked about the look policy in the interview; correct?

MS. SEELY: Objection, vague and ambiguous. I think the witness has testified that she talked about what the witness could and could not wear in terms of makeup, but the witness has already testified there was no conversation about the look policy.

MR. KNUEVE: You've stated your objection. [65] I don't appreciate speaking objections.

Q. You can answer the question. She certainly mentioned the look policy; correct?

A. She never said the look policy, but she stated parts of the look policy as in I would wear clothing that either looked like Abercrombie and then the fact that I wasn't supposed to wear heavy makeup or like polish, nail polish.

Q. Did she state anything else?

A. Not that I can recall.

Q. Okay, and then after she told you all that, she said do you have any questions, and you said no; correct?

A. Yes.

Q. All right. Now, earlier I thought you had said something about there being a discussion about your headscarf during the interview, but there was no discussion about your headscarf during the interview?

A. She never said I wouldn't be able to wear it or anything like that.

Q. And you never brought it up either?

A. No.

Q. It just wasn't discussed during the interview?

A. Right.

[66]

Q. Okay. What, if anything, did Heather say at the end of the interview?

A. She told me that she would be calling me the next day or the day after and let me know when orientation was.

Q. Do you have Exhibit 4 there in front of you?

A. Yes.

Q. Have you ever seen Exhibit 4 before?

A. No.

Q. Did you ever ask to see a job description for the model position?

A. No.

Q. Okay. After the interview, what was the next thing that happened relating to your application for employment?

A. The next day and another day had passed. I'm pretty sure the interview was on a Thursday, and it was Sunday and Farisa was going to work, and she asked me if I had gotten a call back from Abercrombie letting me know for orientation, and I told her no. So she told me when she was going to go into work, she was going to ask what had happened. When she went into work, she was told by the managers that Heather had called or had let the district manager, Randall, know that she was [67] planning on hiring me and that I wore a headscarf. Whenever she told him that, he told her that she wasn't to hire me because I did wear a headscarf, and I guess she asked why, and he said I didn't fit the Abercrombie image and that they had the no black policy, and she told him that I would wear another color, I didn't have to wear black.

Q. Who said that; who said you would wear another color?

A. Heather because her and Farisa had talked about it, and I guess he told her there's no question about it, she can't work here wearing a thing on her head.

Q. Now, this was a conversation you had with Farisa?

A. No, I didn't have this conversation.

Q. Well, you found out this information somehow?

A. Yeah, from Farisa.

Q. Was this a telephone call or was this an in-person conversation?

A. Over the telephone.

Q. All right, and what day was it?

A. Sunday.

Q. All right. So you believed that the interview was Thursday and you had a phone call with Farisa on [68] Sunday?

A. Yes.

Q. And Farisa told you everything that you just mentioned?

A. Yes.

Q. Did she say which managers she had talked to?

A. She said that she had talked to all of them because I guess all of them had been working, and there was only three, Heather, Andrew and Kalen. The store manager was Andrew.

Q. Okay. How long did that conversation last?

A. With Farisa?

Q. Uh-huh.

A. I don't know how long it lasted.

Q. Did you ask any questions?

A. I just asked like who told her.

Q. And she said Heather, Andrew and Kalen?

A. She said that Heather talked to Randall. I'm pretty sure that she said every single one of them had discussed what happened because they were all aware. It was in their store.

Q. Okay. Did you say anything?

A. To Farisa, I just said I can't believe that.

Q. Did you tell Farisa to do anything?

A. No

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[117]

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Q. And you know Abercrombie does not sell headscarves; correct?

A. Yes, I know that. They sell scarves but this wasn't sold as a headscarf.

Q. Well Abercrombie doesn't sell anything—does Abercrombie sell anything that could be worn as a headscarf to your knowledge?

A. They sell scarves.

Q. Do they sell anything that could be worn as a headscarf to your knowledge?

A. Yes, I've seen scarves that I could wear as a headscarf.

Q. What scarf?

MS. SEELY: Objection, vague and ambiguous.

A. A scarf from Abercrombie.

Q. When did you see that?

A. When I've shopped there, I've seen scarves that could have been worn as a headscarf.

Q. And when was that?

A. Not recently since I haven't been in the store in two years, but I've seen scarves that could have been worn as a headscarf, like the one I'm wearing [118] today.

Q. Now, would you agree that those scarves were not designed to be worn as headscarves?

MS. SEELY: Objection, no foundation.

A. I don't think the scarf I'm wearing today was designed to be worn as a headscarf. That doesn't mean I can't wear it as a headscarf.

Q. Where did you get the headscarf?

A. That I'm wearing today?

Q. Uh-huh.

A. From Forever 21.

Q. You've never seen anybody wearing a headscarf at an Abercrombie store; correct?

A. No, I have not.

Q. You've never seen anybody wearing any kind of headwear at an Abercrombie store; correct?

A. I don't know. I don't know if I've ever seen them wear hats or anything but not that I recall, no.

Q. Now, from our discussion earlier, one thing that jumped out at me is some people who are practicing Muslims wear headscarves and some don't, is that correct?

A. Correct.

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[123]

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Q. Would you agree that the headscarf—you've already stated the headscarf is a symbol of modesty; correct?

A. Yes.

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[130]

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Q. Do you believe that the hijab is—well, you've said the hijab is about modesty; correct?

A. (Witness nods head up and down).

Q. Do you believe it's about attracting as little attention as possible?

A. It's attracting as little attention as possible from men.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Case No. 09-CV-602-GKF-FHM

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PLAINTIFF

v.

ABERCROMBIE & FITCH STORES, INC., AN OHIO CORPORATION, D/B/A ABERCROMBIE KIDS, DEFENDANTS

Jan. 20, 2011

DEPOSITION OF KALEN BRYCE MCJILTON

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[49]

Now, under the look policy, is it your understanding that models did not have to wear actual Abercrombie clothes?

A. Yeah, as long as it didn't have a competitor's logo, you could wear it.

Q. You could wear it. So they could wear any kind of clothing they wanted to as long as it looked like Abercrombie?

A. Yes. It had to resemble Abercrombie's look and it couldn't be black. Like we weren't allowed to wear black clothes.

Because Abercrombie didn't sell it; so we were not allowed to wear it because it was obviously [50] not from our store.

Q. Describe to me what you mean when you say they had to wear clothing in the Abercrombie look. What's the Abercrombie look to you?

A. Ummm—

Q. Besides the moose?

A. Yeah. Just kind of like a casual—like a casual look, I guess. I don't—I mean—casual to like—almost like a preppy look.

I don't really know how else to explain it. It's there. There's like a way it looks, but I honestly don't —I'm not sure.

Q. Okay.

And within this—the confines of the look policy that they had to dress in a manner that was like the Abercrombie look, could the models choose each day what they wanted to wear as long as it looked like the clothing that Abercrombie sold?

A. I mean, we had like key colors, and so forth, that we were, you know, asked to adhere to.

But that was more so like when we were being visited by like our—you know like uppers and so forth just to kind of show that we were, you know, like maintaining our look.

But for the most part, it was—yeah, you

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Case No. 09-CV-602-GKF-FHM

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PLAINTIFF

v.

ABERCROMBIE & FITCH STORES, INC., AN OHIO CORPORATION, D/B/A ABERCROMBIE KIDS, DEFENDANT

Mar. 17, 2011

DEPOSITION OF DEON RILEY

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[4]

Q. Could you state your full name for the record, please?

A. Deon Riley.

Q. And what is your title with Abercrombie & Fitch?

A. Group vice president, human resources, stores.

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[18]

And my other question was with regard to that were – during 2008, were both the model employees and the impact associates subject to The Look Policy of Abercrombie?

A: Yes.

Q: And can you tell me approximately how many employees are subject to the Look Policy in 2010?

A: All models, impact, and anyone who works in stores.

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[19]

Q. Can you describe to me all forms of advertising, marketing done by defendant?

A. Our largest advertising is our in-store experience with our models, the look and feel of the store, what the customer has come to expect. We do very little external. Based on what you have lined out in No. 7, Facebook. There is no advertising on Facebook. People choose to join the Abercrombie team, so there is—it's really chatter.

Email. You have to sign up for e-mail in order to get anything. And I was not quite sure what other "Internet media" meant.

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[29]

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Q. I know you haven't been asked this before, but could you tell me what The Look Policy is for Abercrombie?

A. Our Look Policy is a policy in place that is the core part of our in-store experience. It [30] gives guidelines on how all our employees should be attired and what's expected of them in terms of their being able to model our style, which is part of their job role.

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[31]

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Q. And why is The Look Policy important to your stores for Abercrombie?

A. As we discussed before, we do little or no advertising. Our advertising is the experience that that particular customer has when they enter the store as well as what their expectation is from us as a brand. The Look Policy is a core piece of it because our models and managers are expected to be in our style, and this is one of our main ways a customer gets to see our style. We firmly believe that it leads to a better in-store experience and it means customers will return or purchase.

[32]

Q. And is that your—I'm sorry. When I say "your," is that Abercrombie's business strategy?

A. Yes. Our in-store experience is a core driver of our business.

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[55]

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Q. As far as Exhibit No. 19 and the training before it changed in February of 2009, if an issue was raised regarding a religious accommodation, then the training was to contact the H.R. line; is that correct?

A. That would be correct.

Q. And is there any—prior to 2009, was there any training on how to determine whether an [56] issue was a religious discrimination issue?

A. If someone asked for any kind of accommodation, managers know to call H.R.

Q. Okay. If an employee doesn't ask for a religious accommodation, but there may be religious issues, how would the manager know to call H.R.?

MR. KNUEVE: I'll object, but you can answer.

THE WITNESS: Outside of a general running of the store, if there are any employees issues that come forth, the store managers in any of our 1,100 stores know to call the H.R. team.

BY MR. LEE:

Q. And tell me that—all the H.R. training—well, let me back up.

From Exhibit No. 19, is there a specific page that deals with the training on when to call the H.R. line?

A. We've always used the language and not specific to this exhibit, but in all of our training, if you have any doubt about anything, you call H.R. It's pretty common practice. We don't train our managers to be H.R. experts. That's what they pay my team to do.

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[62]

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Q. —when a scenario is given as to No. 4, what is your response? Or what is your training that you provide to the managers?

A. Our managers are aware that if someone is wearing a headscarf, The Look Policy specifically states that we do not allow headwear, and if that question were asked, you go back to page 36. It says, "This would be an exception. Call H.R."

Q. And if the applicant doesn't ask a question of the manager, what's the manager supposed [63] to do?

A. We ask them never to assume anything about anyone, so they do nothing.

Q. And is the interviewing manager supposed to take the headscarf into consideration when they are evaluating on whether or not to make a recommendation for hire?

MR. KNUEVE: I will object, but you can answer.

THE WITNESS: Our interviewing manager takes into consideration whether or not the individual has the appearance and style that we require from our

associates. So if the headscarf is outside of our style, that manager would need to take that into consideration as they would if the person had very visible tattoos or was heavily made up.

BY MR. LEE:

Q. And as to the applicants during the interview process, do you expect the applicants to be in compliance with The Look Policy at the time of the interview?

A. Applicants do not have to be in compliance at the time of the interview. However, most of our applicants, as I indicated, if we have between 200 or [64] 150 from this year, you go back a couple years to 250,000 employees, most of our applicants come to us because they know us. They shop with us. They have friends who work with us. So when they do come in, they're already aware of our policies and requirements for work.

They may not come in with Look Policy, but they are asked in the interview or we read the short paragraph that talks about our Look Policy, and they are asked whether or not they would be in compliance with that policy.

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[77]

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Q. And it's my understanding that The Look Policy is that—or the business strategy behind The Look Policy is that the models are to wear the clothing in order to get others people to buy the clothing like they

are wearing. Is that a simplified version of The Look Policy.

A. I would say that the models are supposed to model our style. They don't have to wear our clothing, but they have to model our style because it is part of that in-store experience that keeps our customers coming back. Yes.

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[92]

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Q. Okay. And as we sit here today, Abercrombie has allowed some exceptions to the wearing of headwear by models; is that correct?

A. That is correct.

Q. And as to a hijabs, do you know about how many models have been allowed an exception to The Look Policy?

A. I think for hijabs, probably around eight.

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[109]

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Q. I wanted to go into, if we could, if an accommodation request has been made, I think you've testified earlier that a manager is supposed to send it up to H.R.; is that correct?

A. Yes.

Q. What's the process once an H.R. person receives a telephone request for religious accommodation?

A. After the H.R. individual or H.R. professional receives a request, they look through the policy to see if there is the ability to accommodate the individual without undue burden; i.e., taking us off brand. If there is a way to accommodate the individual, they will make recommendations. This is then communicated back to the store manager, and as I indicated earlier, or the store manager's boss, and, then, it's communicated to [110] the associate.

Q. Okay. Give me the chain again. So the H.R. person that took the phone call first looks to wouldn't you say the ability to accommodate it? Is that H.R. person looking to a particular document?

A. They look to the policy. They look at different scenarios that may work. So, for example, if we get a request for religious accommodation for jewelry, which is usually a bracelet, the H.R. person takes a look at whether or not, in the spirit of The Look Policy, we are able to accommodate the individual without taking us off style, and may make the recommendation or several recommendations; i.e., if the individual wears a long-sleeve shirt, they can cover the bracelet, or if the individual is able to pin the bracelet inside of their clothing. We try to find some way to make the accommodation, make the recommendations, which are then communicated back through the management chain and to the associate.

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[130]

Q. And do you believe allowing these exceptions would have a negative impact on Abercrombie?

A. As the H.R. leader? As Deon Riley?

MR. KNUEVE: I'll object.

BY MR LEE:

Q. Yeah. As the H.R. director.

A. As I stated before, the company's built on brand, our sense of style, and the in-store experience is paramount. Yes, I believe exceptions will take away from who we are as a brand.

Q. And how will they do that?

A. Customers come in for a consistent experience. We have a customer range of 12 to 17 to 23 years old, depending on the brand we have. It's a lot of competition. Teenagers and young adults are very fickle. Abercrombie has made a name because of the brand. It's a fact that you walk into an environment, and it's not just the smell or the sound, it's the way the merchandise is set up. It's the lighting. Most of all, it's the stylish clothing and the sense of style that each individual you interact with has. That's why people shop us. We sell jeans and T-shirts. So does Wal-Mart.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Case No. 09-CV-602-GKF-FHM

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PLAINTIFF

v.

ABERCROMBIE & FITCH STORES, INC., AN OHIO CORPORATION, D/B/A ABERCROMBIE KIDS, DEFENDANT

Jan. 19, 2011

DEPOSITION OF HEATHER COOKE

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[23]

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Q. Okay.

Let's talk about the time period when you were an assistant manager at the Abercrombie Kids store in Tulsa.

And as I understand it, that was from approximately December of 2007 until February of 2009; correct?

A. Yes.

Q. Okay.

What were your job duties as assistant manager at that time in that store?

A. I was in charge of hiring new employees, managing, supervising the floor. I did audits for the store, like to make sure all the clothing was out on the floor. I did some visual stuff.

Q. Okay.

And who was—who was your store manager at that time?

A. Andrew Sturm-Hamilton was his name.

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[26]

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Q. And who did you report to directly?

A. Andrew Sturm-Hamilton, and then Randall Johnson was my district manager.

Q. Was Randall Johnson actually located in your store?

A. No.

Q. Do you know where his office was or his primary location was?

A. I believe he was in Texas.

Q. Okay.

Did you ever see him in your store?

A. Oh, yeah, all the time.

Q. About how often would he come to the store?

A. Usually once a week.

Q. Would he spend the whole day there?

A. Yes.

Q. And what interaction did you have with him, generally, when he would be in the store?

[27]

A. He would just kind of go over what, you know, the visual displays, staffing goals, just like where the store needed to be.

Stuff like that.

Q. And was he your district manager the whole time you were the assistant manager there?

A. Yes.

Q. Okay. Now, you mentioned—strike that.

Did you supervise anyone?

A. Besides the associates like the models, no.

Q. But you did supervise the models?

A. Yes.

Q. All right.

Now, you mentioned that one of your duties as assistant manager was—I think you said you were in charge of hiring?

A. Yeah.

Q. Can you tell me generally what your duties were with respect to hiring?

A. I would do interviews. I would go recruiting around the mall or colleges or coffee shops.

And just stuff like that. Make sure our staffing goals were good. I did the schedule. I [28] scheduled the associates. Worked around their schedules at school or whatever work or whatever they had going on.

Q. Okay.

Now, you said that you did the interviews for—would that be for models?

A. Yes.

Q. Okay.

Did you make the decisions on—the final decision on whether an applicant for a model position would be hired?

A. Yes.

Q. Okay.

Did you make the decisions on—the final decision on whether an applicant for a model position would be hired?

A. If I had a question about something, I was to ask my store manager. And then if he didn't know, ask my district manager.

Q. When you say a question about something, what do you mean?

A. Like if I wasn't sure if this person had enough experience or we have a certain look policy that we—Abercrombie has, I would just ask.

Q. Okay.

Did you have the authority, as assistant manager, to decide to make an offer to an applicant after you had interviewed him or her?

A. Yeah. I mean—yes.

Q. Did you have to get an okay from either [29] **your store manager or your district manager?**

A. You usually had to get the store manager to like, you know, look over the interview guide or sit in on the interview sometimes, like if you didn't have anything like a meeting or something really important to do.

Q. Uh-huh. You say "you usually had to," I mean, was it your understanding that you could decide to hire somebody after the interview?

A. It was my understanding, but if I had any questions or anything like that, I wasn't sure if someone didn't have enough work experience or they—you know, just something about their look or the look policy, they were violating the look policy, I was to ask.

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[35]

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Q. Now, you said that you were responsible for interviewing and hiring models for the Abercrombie Kids store; correct?

A. Yes.

Q. And did you ever see a job description for a model?

A. Yes.

Q. Heather, I'm going to hand you what's been marked as Exhibit 1.

(Plaintiff's Exhibit No. 1 was marked for identification by the reporter and is included herewith.)

THE WITNESS: Okay.

Q. BY MS. SEELY: And ask you to just look [36] that over and let me know when you're done. See if you've ever seen it before.

A. (Witness complies.)

Yes. I've seen this before.

Q. Can you tell me what this is?

A. This looks like a job description for a model.

Q. Okay.

For a model for Abercrombie & Fitch?

A. Yes.

Q. And is this the job description for a model position at the Abercrombie Kids store when you were there?

A. Yes.

Q. Under what circumstances did you see this particular job description?

A. It was in the handbook, I believe.

Q. Okay.

If you would look, please, at the bottom of page 1 of Exhibit 1, where it says presentation—strike that.

Go back a little bit.

It says "tasks." Do you see that?

A. Yes.

Q. At the bottom third.

[37]

And then underneath it, it says: "The following list summarizes the tasks of the model position."

And under "presentation," the job description says: "Maintains visual and presentation standards throughout the store. Cleans, organizes and maintains the store."

Can you tell me what the model did in that regard?

A. Models were—they would fold the clothing. That's what it means by maintain visual presentations.

Q. Okay.

A. Cleaning the store, like they would have a broom and a mop thing, and they would mop the floor in the morning before we were open. And maintaining store is just folding again.

And we had certain zones. Like the first room was like girls one mand then the next room was like boys one, and so on. And they had to stay in those spots.

Q. They would be assigned to a particular zone?

A. Yes. They would be assigned—yes, like go to girls one. And Hollister was Betty's one, or * * *

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[42]

* * * on their first day, or anything like that.

Q. Okay.

A. So that's—they would train a new model.

Q. Okay.

And the next task on the job description says "customer experience." And it says something to the effect "greets, thanks, interacts with and assists customers."

A. Uh-huh, yes.

Q. And what duties did the model have in that area?

A. We had something called kind tag lines; so when they would enter the store, you would say like "hey, what's up?" If somebody needed a size, a customer, you would get a size for them.

Just talking to customers, making sure they're finding everything okay.

Q. Okay.

And then finally, the task—the next task written in Exhibit 1 says: "Loss prevention and shrink."

What duties did a model have in that area?

A. Like if they saw somebody stealing a flip-flop, they could come up to them and be like, "Hey, I can hold that flip-flop at the register," [43] and they would come and get me, the manager.

Q. Okay.

So am I correct, then, that the models' duties that are outlined in Exhibit 1 were to clean and organize and maintain the store?

A. Yes.

Q. And also to respect and value the diversity of others?

A. Yes.

Q. And also to operate the cash register?

A. Yes.

Q. And open and close the store?

A. Yes.

Q. To train new models?

A. Yes.

Q. Also to help customers when they come in the store to find sizes?

A. Yes.

Q. And great them?

A. Yes.

Q. And also to be sure that there's no shoplifting?

A. Yes.

Q. Okay.

So is it correct that the model at the [44] Abercrombie Kids store where you worked did more than just stand around and model the clothes?

A. Yes.

Q. Now, looking on page 1 of the model job description, under entry requirements—

A. Uh-huh,

Q. —the exhibit indicates that there was no education—no minimum education that a model had to have; is that correct?

A. Yes.

Q. So they didn't have to have graduated from high school?

A. No.

Q. All right.

The next entry requirement listed on page 1 of Exhibit 1 says "specialty retail experience," and under that it says "none is required."

A. That's correct.

Q. Was it your understanding that a model applicant didn't have to have had previous retail experience in order to be hired?

A. Yes.

Q. Now, did—in your opinion, with respect to your hiring duties, did you find previous retail experience to be helpful?

[45]

A. Yes, a plus.

Q. And is that something that you liked to see?

A. Yes.

Q. And you considered in making a hiring decision?

A. Yes.

Q. Okay.

And when you hired models, did you—strike that.

So while having previous retail experience is not an entry requirement, according to the model job description, you thought it was a plus; correct?

A. Yes.

Q. Okay.

And you did consider it when you were making hiring decisions?

A. Yes.

Q. And we talked about Limited 2, remember?

A. Yes.

Q. And if an applicant for a model position had previous experience as a sales representative at Limited 2, did you think that was a plus?

A. Yes.

* * * * *

[60]

* * * * *

Q. Okay.

Now, when you had the—when you had conducted the group interviews, did you have a guide or a document that you worked from?

A. Yes. There was like a model group interview guidebook that you were supposed to use.

Q. And did you use that when you did interviews?

A. Yes.

* * * * *

[78]

Q. At the top it says, "section 4, closing the interview."

A. Uh-huh.

Q. Does this contain the information about ending the interview?

A. Yes.

Q. Okay.

And there's a big block on the page and it says:

"Closing statement (read to candidate)"?

A. Yes.

Q. Did you always read everything in this block or this closing statement at your group interviews?

A. Yes.

Q. There is a section in the closing statement that says "look policy."

Do you see that?

A. Yes.

Q. And do you remember did you always read that entire section on the look policy during your group interview?

A. Yes.

Q. You did?

A. Yes.

[79]

Q. Okay.

Now, is there anything written in the look policy section, on page 21 of Exhibit 4, that says anything about head coverings?

A. I do not see anything.

Q. Okay.

And is there anything in the section entitled "look policy," on page 21 of Exhibit 4, that says anything about not being able to wear the color black if you work at Abercrombie?

A. I don't see it, no.

Q. Okay.

So the section on the look policy that you read during your closing statements in your group interviews

did not say that models cannot wear anything on their head; correct?

A. Correct.

Q. And it did not say that models could not wear black; correct?

A. Correct.

Q. Okay.

Now, if would you look over on page 22 of Exhibit 4.

A. (Witness complies.)

Q. At the top, it says "Section 5 Interview [80] Evaluation Standards."

A. Yes.

Q. Can you tell me what this page—what's on this page? I mean, what did you use this page for?

A. We just used this like a grading scale on how they answer, you know. I just used this as my grading scale.

Q. So in other words, for outgoing and promotes diversity, the section at the top of the page—

A. Yes.

Q. —this section tells you, based upon your evaluation of the—or strike that.

Based upon your observations of the applicant, you would assign them either a 3, a 2, or a 1 in this competency, outgoing and promotes diversity?

A. Yes.

Q. And then you would do the same for the competency, sophistication and aspiration?

A. Yes.

Q. Okay.

And on the next page, page 23 of Exhibit 4, would you also assign either a 1, 2 or 3 [81] to the applicant on appearance and sense of style competency?

A. Yes.

Q. And the next page of Exhibit 4, page 24.

A. Yes.

Q. What is this interview—this says "interview rating sheet." Can you tell me what you used this for.

A. Whatever you scored them, you would put—you'd put the candidate's name. And then you would put your score.

And then would you tally it up. And then it would tell you down here on the little score if you were going to—if they meet recommendations or below recommendations, not recommended.

Q. Okay.

A. Or highly recommended.

Q. So you would—on the left-hand column, you would write—under candidate name, you would put their name?

A. Yes.

Q. And then you would give them either a 1, 2 or 3 in the three competencies—

A. Yes.

Q. —that are listed there?

* * * * *

[86]

* * * the store and kind of orientate them, what the store was like and where they would be at and all their duties and stuff.

Q. And did you hold orientations like every Sunday or just when you were hiring new people?

A. Usually every Sunday. We usually had somebody show up every Sunday.

Q. During the interviews that you conducted did you sometimes discuss the orientation with the applicants?

A. I think I might have mentioned like you might—if you get hired, you'll have to come in for an orientation.

But not—usually not, no.

Q. Okay.

A. I might have mentioned it.

Q. Okay.

Now, do you know Samantha Elauf?

A. I do, yes.

Q. How do you know her?

A. Her friend, Farisa, worked at the store. And it was approaching our tax-free weekend, where you don't pay tax on any clothing.

And so we were going to be really, really busy. And our staffing goals went up quite a bit, [87] and I needed a lot of employees very fast.

Q. Okay.

And what did Farisa have to do with Samantha?

A. I think she's best friends with her. And she has approached me and said, "I have a friend Sam who wants to come to an interview. What days should she come?" And I told her to come. I told her she needed to fill out an application, go upstairs and fill it out and

Q. Had you ever met Samantha before—I mean, did you know who Samantha was at the time that Farisa spoke to you about her?

A. I—she had worked in the mall, I think at like a little fondue place, and I had seen her. And I knew she was friends with Farisa because Farisa worked quite often.

So I knew who she was.

Q. Uh-huh.

A. I think I had seen her before.

Q. Had you seen her—she worked at Limited 2.

Had you seen her there at all?

A. I didn't see her. I mean, my sister did work there, but I—I went in there a lot, but I [88] didn't see her.

Q. Okay.

But you had seen her at the mall before?

A. I had seen her, uh-huh, at the fruit fondu place.

Q. Had you seen her once or more than once?

A. I would say more than once.

Q. And when you saw her, was she wearing a head scarf?

A. Yes.

Q. Did you have any opinion when you saw her in the mall as to her appearance?

A. I thought she was very pretty.

Q. So when Farisa spoke to you, did you remember who she was?

A. Yeah, uh-huh.

Q. Okay.

Did Farisa say anything to you at that time about Samantha wearing a head scarf?

A. No.

Q. But you knew that she did?

A. I did, yes.

Q. And you assumed if she worked at Abercrombie, she would still be wearing that?

A. Yes, I did.

[89]

Q. Okay.

And you told Farisa have her go and fill out an application on the kiosk?

A. Yes.

Q. So what is the next thing that happened with respect to—strike that.

Do you know if Samantha filled out an application on the kiosk?

A. Yes, I do.

Q. How do you know that?

A. From this piece of paper, the application form. This is what she filled out.

Q. Okay.

So you are pointing to what has been marked as Exhibit 2.

A. Oh, Exhibit 2. Sorry.

Q. Okay.

A. Yes.

Q. And you looked—did you see that Exhibit 2 on the computer in your Abercrombie Kids store?

A. Yes.

Q. And do you remember if you reviewed it before you interviewed Ms. Elauf?

A. I honestly do not remember if I reviewed [90] it. We were extremely busy; so I don't remember if I reviewed it.

Q. Okay.

And you said you were approaching the tax-free weekend at the time.

Was that in the summer?

A. Yes, August.

Q. August or was it June or July?

A. Maybe—I thought it was in August, but maybe it was July.

Q. Sometime in the summer?

A. Summertime.

Q. Okay.

A. Well, the kids weren't back at school.

Q. All right.

Now, did you talk to anyone other than Farisa about Samantha working at Abercrombie before you interviewed her?

A. No.

Q. Okay.

And did you interview Samantha Elauf for a job as a model?

A. Yes, I did.

Q. Okay.

A. Can I—the question before that you [91] asked if I told anybody.

I'm pretty sure that I—we had recruiting goals for the day. And I'm pretty sure I put her name on like my recruiting goal that like somebody was coming for an interview.

So I could have told the store manager, "Hey, I have Samantha. She's coming to interview," so he could tell the district manager.

So yes, I might have told somebody she was coming for an interview. That's it.

Q. Okay.

Do you remember having any specific conversation with your store manager about Samantha coming for the interview before the interview happened?

A. Like I said, I think I just told him like, "Samantha is coming. She's Farisa's friend. She's going to come do an interview on Tuesday," da da da date.

Q. And this was Andrew?

A. This was the store manager, yeah.

Q. And do you remember what, if anything, he said when you told him that Samantha was coming for an interview?

A. He said, "Good. Good job." You know, [92] "You got a recruit for the day. Good job."

Q. Do you know, at that time, if Andrew knew who she was?

A. I do not believe Andrew knew who she was, no.

Q. And why do you say that?

A. He wasn't very sociable; so I don't know if he walked around the mall like—and that's how I saw her.

I would go down to the food court, and I would see her.

Q. Yes.

A. And I don't know if he really paid attention to who is friends with who or anything like that.

Q. Okay.

A. So.

Q. Do you ever remember seeing Samantha coming into the Abercrombie Kids store before you interviewed her?

A. I believe that she was probably in there to see Farisa or to poke in—I don't know if I saw her shopping in there, but I think I had seen her say "hello" to Farisa at the door or something.

Q. Okay.

[93]

A. You know.

Q. All right.

So what happened next after you reviewed Samantha's application on the computer?

A. She came in for an interview, after that. She just came in, and I interviewed her.

Q. Do you remember if she was—well, how much time passed between just—

THE WITNESS: A couple days—

A. —I'm not really sure.

Q. Okay.

And was she the only person you interviewed at that time? Or were there other applicants in the group interview?

A. I believe there were other people, but I'm not sure.

Q. Okay.

And did you have a Model Group Interview Guide with you at that time?

A. Yes, I did.

Q. That you filled out?

A. Yes.

Q. All right.

MS. SEELY: Let's go off the record for a [94] second. Let's take a quick second. I need to restaple these.

Do you need to use the restroom.

THE WITNESS: Yes.

THE VIDEOGRAPHER: 11:27 A.M. This concludes videotape No. 1.

(A recess was taken.)

THE VIDEOGRAPHER: All right.

It's now 11:34 A.M. Beginning of videotape No. 2. We're back on the record.

Q. BY MS. SEELY: Okay.

Heather I'm going to give you what's been marked Exhibit 5.

(Plaintiff's Exhibit No. 5 was marked for Identification by the reporter and is included herewith.)

THE WITNESS: Okay.

Q. BY MS. SEELY: And ask you to take a look through that. And let me know when you're done.

A. (Witness complies.)

Okay.

Q. What is that document?

A. It is the group interview with Samantha.

Q. So is this the Model Group Interview Guide that you filled out for Samantha Elauf?

[95]

A. Yes.

Q. And looking at page 2 of Exhibit 5, which is A&F 8—

A. Yes.

Q. —does that refresh your recollection as to whether Samantha was the only applicant you interviewed at that time?

A. Yes, she was.

* * * * *

I'm going to show you what's been marked as Exhibits 6 and 7.

(Plaintiff's Exhibit No. 6 and 7 were marked for identification by the reporter and are included herewith.)

Q. BY MS. SEELY: Heather, are Exhibits 6 and 7 photographs of Samantha Elauf?

A. Yes

Q. Okay.

So you remember what she looked like?

A. Oh, yeah.

Q. And in Exhibits 6 and 7, she's wearing a head scarf; is that right?

A. Yes, she is.

[96]

Q. And do you recall if this was the type of head scarf she was wearing when you interviewed her?

A. Yes, I think it was.

Q. Okay.

Now, when you—you said, you had seen her around the mall before you interviewed her; correct?

A. Yes.

Q. And she was wearing a head scarf at that time?

A. Yes.

Q. And what did her wearing a head scarf signify to you, if anything?

A. That she was Muslim. I figured that was the religious reason why she wore her head scarf, she was Muslim.

Q. Okay.

Back to Exhibit 5, the Model Group Interview Guide—

A. Yes.

Q. —that you filled out on Samantha.

Page 2, Abercrombie & Fitch 8, is that Samantha's handwriting, to your knowledge?

A. Yes, it is.

Q. That's not your handwriting?

A. No, it's not.

[97]

Q. And she filled it out because that was your practice to have the applicant fill it out?

A. Yes.

Q. Okay.

And you were the interviewer who filled out this guide; correct?

A. Yes, I was.

Q. And at the time Samantha came for the interview, you assumed she was Muslim; correct?

A. Yes, I assumed.

Q. Because she wore the head scarf?

A. Yes.

Q. All right.

Now, do you remember anything in particular that you discussed with Samantha during your interview, other than the questions that are on the Model Group Interview Guide?

A. I think—I know I mentioned like that this was going to be a really busy time, and the tax-free was coming, and that I needed as many people.

And you know, that it was going to be really hectic, and you, know that three days that we had tax-free was just going to be really hectic.

And you know, I explained to her like what [98] I assumed was going to happen because I had never been through one. But I think I talked to her about that that, you know, it was going to be really busy.

Q. And you asked her the questions that are contained on the Model Group Interview Guide; is that right?

A. Yes, yes.

Q. And do you remember anything else that you discussed with her during the interview?

A. I think—no. Not anything—I mean, out of this, I don't think anything else I talked to her about.

Q. Okay.

Did you discuss the fact that she wore a head scarf during the interview?

A. No, no.

Q. And do you remember if the head scarf she was wearing at the time was black or some other color?

A. I think it was black.

Q. Did you discuss with her the fact that she could not wear black if she was hired as a model?

A. No.

Q. You remember that clearly?

A. I don't think I mentioned—unless—[99] it's not in here; so I did not say it.

Q. Okay.

Now, when you were interviewing Samantha, did you personally see that there would be any problem—strike that.

When you were interviewing Samaritan, did you believe that there would be any problem with her working as a model at Abercrombie Kids wearing a head scarf?

A. I had never interviewed anybody that wore a head scarf; so I thought I'd ask like the store manager because I've asked him questions about stuff like anything—tattoos or any piercings.

I thought I would ask him and see what he thought. And—but other than that, no. I mean.

Q. Well, I guess my question is: During the interview, you saw she was wearing the head scarf?

A. Yes.

Q. Did you, at that time, feel that she should not be able to work as a model at Abercrombie Kids because she was wearing the head scarf?

A. No. I did not feel. I felt like she could. I didn't feel like there was anything wrong with it.

[100]

But I knew that in—not in this, but in the Employee Handbook, it does say that we're not supposed to wear the color back. But they had just said we could wear black converse tennis shoes. So I was a little unclear.

And I think it says in the handbook you can't wear hats. So I was unclear. So that's why—I was the assistant manager and that's why I asked the store manager and the district manager.

Q. Why didn't you say to Samantha, you know, the look policy requires no—you know, "You can't wear anything on your head."

Why didn't you bring that up with her if you knew the handbook says that was against the look policy?

A. Because it was in the handbook and it wasn't in this. I was told just to follow this.

Q. By "this," you mean the Model Group Interview Guide?

A. Yes, the group interview.

Q. So you were sticking to the script?

A. I was just sticking to the script. That's what most people do; so that's what my store manager did.

Q. Okay.

[101]

A. She showed me; so I just did it like I normally would.

Q. Okay. All right.

And on Exhibit 5, Samantha's Model Group Interview Guide on page—the third page—not the third page. Sorry.

Do you remember reading the opening script, as you sit here today, to Samantha?

A. Yes.

Q. Okay.

And then on the page after that—and it says at the bottom A&F 1996.

A. Yes.

Q. Is that your handwriting under "outgoing and promotes diversity" under the group A questions and the group B questions?

A. Yes. It looks like it.

Q. So did you write, basically, a summary of Samantha's answers to your questions on page 1996?

A. Yes.

Q. Okay.

And under the—when you asked her the question "what is your definition of diversity," do you think she gave a good answer?

A. Yes. It looks like she said something [102] about different types of people from different backgrounds. Just different people.

Q. Okay.

Now, I see that under the column headed appearance and sense of style, it's blank.

Did you—do you recall writing anything in that column when you did the interview?

A. Like I said, when I originally—my store manager—I went through a group interview with her, there wasn't this column.

So I really wasn't sure what this column was. So for a long time I don't think I wrote anything in it.

And I think maybe a district manager or a store manager like told me, "Heather, you need to start writing in the appearances and sense of style," because I just wasn't aware that I was supposed to write it in there.

Q. Okay.

So you think—as you sit here today, you think you just never wrote anything in that column for Samantha?

A. I believe that I did not write anything in that column.

Q. You don't remember writing anything?

[103]

A. I don't remember writing anything.

Q. Did anyone tell you to go back and white-out any writing that you might have put in that column?

A. I don't recall anyone telling me to white-out anything.

Q. Okay.

If you would look at the next page of Exhibit 5, and that's numbered A&F 2681.

A. (Witness complies.)

Uh-huh.

Q. Is that your handwriting on this page?

A. Yes. It looks like it.

Q. And did you summarize, in your handwriting, her answers to the questions you asked her?

A. Yes.

Q. Okay.

And if you could look over at the last page of Exhibit 5, which is A&F 1997.

A. (Witness complies.)

Yes.

Q. Okay.

Is that your handwriting on this interview rating sheet?

[104]

A. Yes.

Q. And is this the interview rating sheet that you filled out for Samantha Elauf after your interview was over?

A. I do not believe this is the actual one that I filled out.

I believe this is one that I printed out later on and was told what to score her.

Q. Okay. Well, let's talk about that.

So at the conclusion of your interview with Samantha, am I correct that you filled out an interview rating sheet?

A. Yes.

Q. Okay.

And do you recall, under the column "outgoing and promotes diversity," there's a number 2 written there?

A. Yes.

Q. Do you recall if that was the score you originally gave her?

A. Yes, I believe it is.

Q. Okay.

And under the column headed "sophistication and aspiration," there's a 2 written in that column; is that correct?

[105]

A. Yes.

Q. Is that the score you originally gave her?

A. Yes, I believe so.

Q. And under the column headed "appearance and sense of style," there's a number 1 written there; correct?

A. Yes.

Q. Is that the number—or the rating that you gave her originally?

A. I think I gave her a 2.

Q. Okay.

A. But I'm not sure, but I think, I gave her a 2.

Q. Did you give her a 1 originally?

A. No.

Q. Okay.

Might you have given her a 3?

A. No. I'm pretty sure—somebody had to be really, really good as a 3. I mean, I hardly ever gave 3's.

Q. Uh-huh.

A. I'm pretty sure on most of them, I gave them 2.

Q. Okay.

A. That seems to be the medium.

[106]

Q. But you know as you sit here today, that you did not give her a 1 originally?

A. I do not believe I gave her a 1 on my own.

Q. Okay.

And then there's a total score written 5; is that correct?

A. Yes.

Q. Okay.

Now, if you had given her a 2 under appearance and sense of style, is it fair to say that the total score that you originally gave her was a 6?

A. 6, yes.

Q. Is that correct?

A. Yes.

Q. Okay.

And then under "hiring recommendation," there's an X in the column headed not recommended.

A. Yes.

Q. Is that right?

A. Yes.

Q. Was that your original recommendation?

A. No. It was recommended was my original.

Q. Okay.

And so after you filled out your original [107] interview rating sheet, what happened next in terms of the decision on whether or not to hire Samantha Elauf?

A. I was unsure about the head scarf; so I asked the store manager. And he did not know anything about it.

And so I asked the district manager and—Randall Johnson, and he told me not to hire her because she had a head scarf.

And that we were not allowed to wear hats at work. And if she wore the head scarf, then other associates would think they could wear hats at work.

Q. Okay.

And did you—did you discuss it with him in sort of—did you have any discussion with him over this?

A. Yes, I did. I thought she was a very good candidate to work there.

And I asked him, you know, she wears the head scarf for religious reasons, I believe. And he said, "You still can't hire her because someone can come in and paint themselves green and say they were doing it for religious reasons, and we can't hire them."

And I told him that I believed that she [108] was Muslim, and that was a recognized religion. And that she was wearing it for religious reasons. And I believe that we should hire her.

Q. And what did he say?

A. He told me not to hire her.

Q. Okay.

And I take it you specifically—you remember that he said someone could paint themselves green and claim it was a religion?

A. Yes.

Q. That stuck in your head?

A. It did, yes.

Q. Okay.

A. Very much.

Q. Now, did he make any—and this is Randall Johnson we're talking about; correct?

A. Yes.

Q. Your district manager?

A. Uh-huh, yes.

Q. Had he ever seen Samantha, to your knowledge?

A. I do not believe he had. I don't know if he had. He might have, but I'm not—I don't believe that he had.

Q. Okay.

[109]

Did you tell him, during this discussion, anything about her appearance, your view of her appearance?

A. Uh-huh. I told him that she wore a black head scarf and that she was very pretty. From what I recall, I remember that she did have like a Abercrombie & Fitch like T-shirt on. I think a pair of jeans.

And I thought she would be a really good candidate to work there. And I told him that that I thought we should hire her.

Q. Do you remember if he made any remarks, any disparaging remarks, about her head scarf?

A. No.

MR. CLARK: Objection.

Q. BY MS. SEELY: Do you recall whether he said something to the effect of "she can't work here wearing that thing on her head"?

A. I don't recall him saying that to me. I don't recall that.

Q. Did you ever hear that he said that to anyone else?

A. I didn't hear that.

Q. No other manager said, "Oh, Randall told me she can't wear that thing on her head"?

[110]

A. Not that I recall.

Q. So after Randall Johnson told you you could not hire Samantha, what happened next?

A. Nothing. I only called candidates that I was going to hire. I told them at the end of the interview, "Kind of treat this as a casting call. We'll call you, don't call us."

And I just never had any contact with her. So nothing.

Q. About hiring her?

A. About hiring her.

Q. Okay.

Now, at some point in time, did Farisa talk to you about whether or not Samantha was to be hired?

A. Yes.

Q. And when did that occur, relative to the interview?

A. A couple days—a week later, she asked like, "Are you going to hire my friend?"

And I told her, no, I was not going to.

Q. And did you tell her why?

A. I told her I couldn't discuss anything in the interview, but I just was not going to hire her.

Q. Did you tell Farisa that it had anything [111] **to do with the fact that she was wearing a head scarf?**

A. No.

Q. Did Farisa ask you if it had to do with her wearing a head scarf?

A. Yes.

Q. What, as best you can recall, did Farisa say to you?

A. She said, "Is it something—why aren't you going to hire her? She's really good. She is my best friend." And she seemed very upset.

I said, "I can't hire her and I can't talk to you about anything that goes on in the interview, questions, anything like that. I'm just not going to hire her."

Q. Did Farisa mention her head scarf, Samantha's head scarf?

A. Yeah.

Q. What did she say about it?

A. She said, "Are you not going to hire her because of her head scarf?"

And I said, "No. I was just told I couldn't hire her because of the heard scarf."

I did tell her that.

Q. So you told Farisa you could not—you [112] **were told you couldn't hire her because of the head scarf.**

A. And I said, "I really can't discuss this anymore because I don't want to get in trouble or fired or lose my job over something like this, and I really can't talk to you anymore about that."

Q. Now, when you told Farisa that you couldn't say anything more because you didn't want to get in trouble or get fired, why did you say that?

A. I had a feeling this was going to be a problem. I wanted to hire her. I thought that she would be a good candidate to come work for us.

I had a feeling this was going to be a problem, like I thought this was wrong. I didn't like it. And

that's why I figured that there was going to be a problem.

* * * * *

[121]

* * * * *

Q. Okay.

Now, you said that you—said a couple times that you thought Samantha was a good candidate to work at Abercrombie as a model; correct?

A. Yes.

Q. Why did you think that? What was it about her that made you think that?

A. She was excited to—like she was excited about the company and the brand. She had retail experience.

She just seemed like a good person to work there. Like—we had a lot of problems with—we had tag lines up in the front room, and they had to say things within a certain amount of time. And some of them were embarrassed to talk to customers.

And I figured she was—you know, she was outgoing; so I figured that she would say the tag lines.

And I know we would get secret shopped. And if we had a bad secret shop, it was usually based on somebody didn't say the tag line.

And so I figured that I could put her up [122] there and she would say the tag line and she would help customers because she worked in retail.

So I figured that she would be really good.

Q. And how about her appearance? What did you think about that?

A. Like I said, I thought she was very pretty. She had an Abercrombie shirt on. I thought she would be a good candidate.

Q. Going back to Exhibit 5, the Model Group Interview Guide that you filled out for Samantha—

A. Yes.

Q. —you testified that you originally filled out an interview rating sheet that was different than the one that is on—in Exhibit 5; is that correct?

A. Yes.

Q. Okay.

So how is it—when did you fill out the interview rating sheet that is in Exhibit 5, which is numbered A&F 1997?

A. When my district manager, Randall Johnson, told me not to hire her, and he told me to give her a 1 on appearance, so then her score would be a 5 instead of a 6, and I would not hire her.

[123]

Q. So he gave you those instructions. And then you went and filled out a new interview rating sheet?

A. Yes.

Q. And that's the interview rating sheet that's in front of us now?

A. Yes.

Q. Which is A&F 1997?

A. Yes.

Q. What happened to the original interview rating sheet that you filled out?

A. It was thrown away.

Q. Did you throw it away?

A. Yes.

Q. And why did you throw it away? Did someone tell you to do that?

A. Well, he told me to make sure that she was not hired; so I mean, I couldn't put it on the back of it. So I just threw it away.

Q. Okay.

A. He told me to write this so.

Q. Do you remember any other conversation that you haven't already told me about that you had with Randall Johnson about Samantha Elauf?

A. Ummm.

[124]

Q. Anything else he said to you or you said to him?

A. I can't think of anything else. I mean, I know he took me outside and told me to not say anything.

I can't recall any other times that we talked about it.

* * * * *

[125]

* * * * *

Now, I want to take you back to your interview with Samantha Elauf.

A. Yes.

Q. And I think you testified that she was wearing an Abercrombie & Fitch T-shirt when you interviewed her.

A. Yes.

* * * * *

Now, at the time you interviewed her, did you think she was attractive?

A. Yes. Very pretty.

[126]

Q. And did she appear to be an active person?

A. Yes.

Q. Did she appear to be outgoing?

A. Yes.

Q. Did you think she was stylish?

A. Yes.

Q. Did you think she appeared to be happy?

A. Yes.

Q. Did she appear to you to be a fun person?

A. Yes.

Q. Did she appear to you to be confident?

A. Yes.

Q. Would you call her pretty?

A. Yes.

Q. And did she appear to you to be a casual person?

A. Yes.

Q. And did she appear to you to be a diverse person?

A. Yes.

Q. Why did she appear diverse to you?

A. She—well, I mean, the head scarf was—she was a little bit like darker complected.

That's all I noticed that she was diverse.

Q. And she answered your question on what is [127] **diversity correctly, in your opinion?**

A. Yes, she did.

Q. Okay.

Are we on 8? I think we're on 8; right?

Heather, I'm going to hand you what's been marked Exhibit 8, and ask you to take a look at that and let me know if you can identify it.

(Plaintiff's Exhibit No. 8 was marked for identification by the reporter and is included herewith.)

THE WITNESS: (Witness complies.)

MR. CLARK: Take your time.

THE WITNESS: Okay.

MR. CLARK: Do you want her to read the whole thing?

MR. SEELY: No. I just want her to take a look at it—

THE WITNESS: No. I was just looking at something. It looks like this is the Employee Handbook.

Q. BY MS. SEELY: Okay.

Is Exhibit 8 the Employee Handbook that was in effect when you were the assistant manager at the Abercrombie Kids store in Tulsa?

A. I believe so.

[128]

Q. Okay.

Would you please look at page 29 of the—of Exhibit 8. The page number of the book is 29. It's also marked A&F 53.

A. (Witness complies.)

Okay.

Q. Do you see that?

A. Yes.

Q. And up towards the top, there is a heading that says "Appearance/Look Policy"?

A. Yes.

Q. Do you see that? Okay.

And about halfway down the page, it says A&F Look Policy Guidelines.

Do you see that?

A. Yes.

Q. Okay.

And it goes over onto the next page, page 30. And on page 30, there's actually the second paragraph says "caps"?

A. Uh-huh.

Q. Caps. And it reads:

"Caps. Even though Abercrombie & Fitch sells caps, they are considered too informal for the image we project. Caps are not [129] allowed to be worn on the sales floor."

Did I read that correctly?

A. Yes.

Q. Now, was it your understanding—well, strike that.

Did Abercrombie & Fitch sell baseball caps at the time you worked for them?

A. Yes, they did.

Q. Okay,

And was it your understanding that the male models couldn't wear baseball caps even though Abercrombie sold them?

A. Yes.

Q. Okay.

Now did you believe that the look policy prohibited anything on the head, when you were assistant manager there? Or did you think it just went to caps?

A. I assumed that it just meant caps; so I mean—I had never encountered anybody else that had anything else on their heads; so a cap was the only thing I ever encountered.

So I assumed caps.

* * * * *

[150]

* * * * *

Q. Based upon your observation of Samantha Elauf at the interview that you held with her and at other times, would you say that she could be described as flirtatious?

A. I don't believe that she was flirtatious, no.

Q. How about energetic?

A. Yes.

Q. Did you feel that she had an attitude in a good way?

A. Yes, I mean a positive attitude, yeah.

Q. Would you use the adjective popular in connection with her?

A. I could see that she could be a popular girl.

Q. How about wholesome? Did she seem wholesome to you?

A. Oh, yes.

Q. Thank you. I'm going to hand you what's [151] been marked as Exhibit 14. And I'm going to represent to you that this was a letter that was sent to the EEOC during the investigation Samantha charge of religious discrimination. And it was sent by an attorney for Abercrombie on November 12, 2008.

And I have no reason to believe you've ever seen this before.

(Plaintiff's Exhibit No. 14 was marked for identification by the reporter and is included herewith.)

THE WITNESS: Okay.

Q. BY MS. SEELY:

But I'm showing it to you now because I want to look at a couple of statements that were made in the letter to see if you agree with them.

A. Okay.

Q. If you would look at the third page of Exhibit 14, at the bottom, it says EEOC 85. At the very bottom of that page, the last sentence on that page reads:

> **"Assistant manager Heather Cooke conducted the interview and reviewed with Ms. Elauf certain Abercrombie policies including the look policy."**

And is that a true statement?

[152]

A. I think in the interview guide, there's a few—a small paragraph about the look policy; so it doesn't go

into detail. It just gives the general so they are aware that we have one.

I felt it was a little strict, but they know ahead of time.

Q. Okay.

So it is true, then, as you sit here today you recall going over some portions of the look policy?

A. Some portions of it, yes, of the look policy with her.

Q. And in the next paragraph, which is on page—the fourth page of Exhibit 14, at the bottom, it's numbered EEOC 86, the first full paragraph says, in the second sentence:

> **"Ms. Cooke decided that Ms. Elauf was not qualified for a model because both her head covering and the color of the covering violated the look policy."**

Is that a true statement?

A. No, I did not—no. I was told to not hire her by Randall Johnson, my district manager.

Q. So you did not decide that she was not qualified for the model position?

[153]

A. No, I did not.

Q. That was someone else's decision?

A. Randall Johnson.

Q. Okay.

Now, if you would look at the second full paragraph on EEOC 86, the paragraph starts out: "In her charge."

Do you see which one I'm talking about?

A. Yes.

Q. The third sentence says:

"Ms. Cooke did not know Ms. Elauf's national origin or religion at the time of the interview."

Is that a true statement?

A. I did not know. I mean, no, I did not mow.

Q. Did you assume that she was Muslim?

A. I did assume that she was Muslim.

Q. Did have any—did you make any assumptions about her national origin?

A. No. I just assumed that she was Muslim because of the head scarf was for religious reasons.

* * * * *

[163]

* * * * *

Were you also responsible for making sure that models were within compliance with the look policy?

A. Yes, I was.

Q. Was that a big part of your job?

A. Yes.

Q. How often would you say, in your time as an assistant manager at the Abercrombie Kids store, would you have a model come into work in some way [164] **deviating from the look policy?**

A. Quite often. We'd have to send them home to change if they weren't in the look policy.

Q. Okay.

So in some instances, they would be sent home?

A. Yes.

Q. And told them to come back in compliance?

A. Yes.

Q. And in other instances, they would be allowed to change what they were wearing?

A. Yes. Like if they weren't shaved, they would have to go in the bathroom and shave with the razor and shaving cream.

* * * * *

[168]

* * * * *

Q. And you had two concerns regarding that [169] **that you discussed with first your store manager and your district manager; correct?**

A. Yes.

Q. And those two concerns were that she had a head scarf and that the head scarf was black; correct?

A. Yes.

Q. And when you spoke to your district manager, Randall Johnson, you knew that head wear and black items were prohibited by the look policy; correct?

A. Yes.

* * * * *

Abercrombie & Fitch Job description for: model

model

projects and protects the image of the brand through personal style, providing customer service and maintaining presentation standards

entry requirements

the following list summarizes the entry requirements of the model position

education

- None

specialty retail experience

- None is required

supervisor/managerial experience

- None is required

work schedule requirements

Part-time associates are typically required to work one to two shifts per week on average, each shift being about 5 hours. Part-time associates are expected to be on-call at least one shift per week.

tasks

the following list summarizes the tasks of the model position

presentation
Maintains visual and presentation standards throughout the store. Cleans, organizes, and maintains store, ensuring assigned zones are standardized. Completes store recovery.

represents the brand
Creates a fun and engaging environment by upholding Abercrombie's vision and standards, and generating new ideas to improve store experience and entertain customers. Adheres to Abercrombie guidelines in personal appearance, and rules of conduct. Recruits and recommends candidates for store positions.

communication
Develops good working relationships with others. Keeps manager informed of customer, maintenance, and cleanliness issues. Communicates with others in a timely and appropriate manner. Respects and values the diversity of others.

policies and procedures
Follows Abercrombie procedures, including Handbook Policies, as well as all managerial instructions and assignments. Follows standard procedures for opening and closing the store. Arrives, clocks in, and clocks out promptly for shift. Operates cash register.

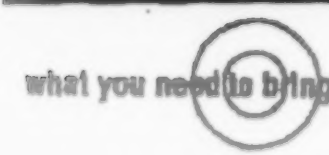
training/development
Participates as an active team member in accomplishing team goals. Seeks out, listens to, and uses feedback to improve job performance.

customer experience
Greets, thanks, interacts with, and assists customers to exceed their expectations and ensure they are satisfied with their Abercrombie experience. Keeps up to date on merchandise choices to share this knowledge with customers. Adheres to assigned zone coverage.

loss prevention and shrink
Follows all Abercrombie safety and security policies. Follows all fitting room procedures. Monitors shrink by being aware of signs of theft, communicating customer service recovery statements, and assisting loss prevention in the event of theft.

competencies

the following list summarizes the competencies of model position



Sophistication & Aspiration
Appearance and Sense of Style
Interpersonal Interaction
Diversity Awareness
Work Ethic
Integrity

Loss Prevention
Visual Displays
Product Knowledge
Fashion and Trend Knowledge
Adaptability/Flexibility

Applied Learning	Multi-Tasking
Outgoing	Proactive Thinking
Communication Skills	Attention to Detail
	Register Use
	Customer Focus
	Passion for the Brand

[IMAGE OMITTED] **Abercrombie & Fitch**

[redacted] **model group interview guide**

[IMAGE OMITTEED]

date: [6-26-08]

store: [239]

division: [kids]

interviewer name: [Heather Cooke]

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PLEASE KEEP COMPLETED FORMS
FOR MONTHY HR MAILING

March 2008

candidate sign-in sheet

As an interviewer, prior to administering this structured interview, you must:

- make sure all candidates sign in below
- collect the sign-in sheet before beginning the interview

Please Print Clearly!

	first name	last name	date/[Phone #]
1.	[Samantha]	[Elauf]	
2.	_____	_____	
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____
7.	_____	_____	_____
8.	_____	_____	_____

section I: instructions to interviewers

As an interviewer, prior to administering this structured interview, you should:

- review competency descriptions:
  - **outgoing & promotes diversity:** The ability to be extroverted, fun, friendly, active, and social. This includes projecting an energetic, dynamic, vigorous and lively personality, actively seeking out interaction with others. This includes maintaining liveliness and enthusiasm, having a positive demeanor, displaying a passion and enjoyment for life, and focusing on success. This also includes the ability to work and relate well to people from diverse backgrounds; being aware of, understanding, respecting, valuing, being sensitive to, and promoting diversity (e.g., racial, cultural, ethnic, gender, sexual orientation, age, educational, professional, etc. backgrounds and styles of others) and adapting one's own behavior based on that understanding. This includes seeking out, valuing, and utilizing these individual difference to implement and realize Abercrombie's commitment to diversity and inclusion.
  - **sophistication & aspiration:** The ability to show confidence, poise, and maturity. This includes believing in oneself and one's own abilities, the ability to think positively about actions and events and anticipate the best possible outcomes, maintaining liveliness and enthusiasm, having a positive demeanor, displaying a passion and enjoyment for life, and focusing on success; influ-

encing customers' aspiration to dress in Abercrombie brand clothing.

- **appearance & sense of style:** The ability to present oneself attractively, appear well groomed, and wear attractive, stylish, fashionable clothes and hairstyle, make-up, and accessories that are consistent with the Abercrombie brand. This includes having personal attractiveness that exhibits personal appeal and wearing clothes that fit the brand and setting the example of the brand lifestyle.

- review interview questions and evaluation standards on the following pages
- review candidates' applications for past jobs and experiences related to the interview
- review minimum qualifications for the position
  - Education: none; Specialty Retail Experience: none; Supervisory/Managerial Experience: none

The interviewer should take detailed notes during the interview. Your notes should:

- be legible;
- record what was actually said;
- be specific and focus on behaviors;
- include relevant details;
- use descriptive and concrete terms;
- ensure that you have enough information about each candidate to rate him/her on each competency;
- not be concerned with correct spelling; and
- ***NOT BE REVEALED TO THE CANDIDATE.***

Upon completion of the interview, you should:

- review notes and highlight important behaviors;
- review the evaluation standards associated with each competency;
- compare candidates' behaviors to evaluation standards for each competency and assign a score (note: be sure to document your ratings in the appropriate column);
- record comments on candidates' overall strengths and weaknesses;
- add individual competency scores to determine the candidates' final scores;
- compare the candidates' final scores to hiring recommendation (e.g. Below Expectations, Meets Expectations, and Outstanding);
- record hiring recommendation in Application Management System; and
- ensure all interview materials are securely stored.

section II: outline for opening the interview

BEFORE YOU BEGIN THE INTERVIEW:

Part of your role as an interviewer includes the responsibility for helping candidates perform their best during the interview. You can help candidates feel comfortable by:

- ensuring a quiet, distraction-free environment;
- building rapport; and
- avoiding inappropriate questions during initial conversations

INTRODUCTION

1) Introduce yourself by giving your name and your position.

2) Welcome them to the interview and thank them for being interested in Abercrombie & Fitch.

3) Let applicants know that it is really important that everyone fill out an application on the kiosk before the interview. ASK: Has anyone NOT completed an application on the kiosk? If they have not, please tell them that they need to do so, and they should attend an interview on a later date, once their application is completed.

4) Let the applicants know that we use a structured interview and that you will be reading from a guide during the interview to make sure that you cover everything completely.

Opening Script: Read to candidates AFTER you've gone through the introduction (above)

Remember to read slowly, praise when effective, and maintain eye contact as much as possible

The purpose of the interview today is to help me get to know you a little better, and for you to learn a little more about Abercrombie & Fitch and this position.

Abercrombie & Fitch is committed to increasing and leveraging the diversity of our associates and management across the organization. We are promoting the diversity of our workforce through recruitment and by providing equal opportunities to all applicants and associates, regardless of race, ethnicity, or gender.

This is a model group interview, so I'd like to talk to you briefly about the model position. The model projects the image of the brand through personal style, providing customer service, and maintaining presentation standards. Hopefully you all had a chance to look at the job description of the model position, but let me give you a brief overview of what a model does in the store on a typical day. A model:

- represents the brand by creating a fun and engaging environment in the store;
- cleans, organizes, and maintains the presentation of the store;
- interacts with customers and answers their questions about the clothes;
- typically works one to two shifts per week, and each shift is about 5 hours, although schedules will vary throughout the year;

- is expected to be on-call at least one shift per week.

Does anyone have any questions for me about the Model position at this point?

During the interview, I will be asking questions to get specific information about your job related experiences. Everyone who interviews for a model job will be asked the same types of questions. It is totally fine for you to take some time and think about your answer before you respond. I will be taking notes on your responses to help me remember what you all said during the interview. You will have a chance to ask me questions at the end of the interview.

This interview will evaluate your fit solely for the Model position. However, we have many other store positions, and if you would like more specific information on these positions, please talk to me after this interview.

Introduction of Applicants:

Please introduce yourself by telling us your name, something you like to do for fun, and why you want to work for Abercrombie.

Additional Conversational Questions: (Optional)

- Who is your favorite band or group right now?
- If you could have any job in the world, what would it be?
- What makes a job fun for you?

section III: interview questions & notes

Choose 1 question from each group. Repeat the question to each candidate. Questions in italics are probe questions that you may or may not need to ask in order to get at specific behavioral examples.

		outgoing & promotes diversity	
name	appearance & sense of style	group a questions	group b questions
	use the space below to record your description of the candidates' appearance and sense of style	[1.] How would others (e.g., friends, family, coworkers) describe your personality? What are the strongest characteristics of your personality? *Please give me an example.* 2. How much of your time do you like to have to yourself versus hanging out	[1.] What is your definition of diversity? Is diversity important in the workplace? Why or why not? 2. How have you helped create a situation where people of different backgrounds felt included and respected? *Please give me an example.*

		with others? *Please give me an example. What do you like most about interacting with others?* 3. How have you maintained positive and friendly interactions with others? *Please give me an example.*	
1.		[She tells you what she thinks good leadership skills]	[Diff/types of people good, so you can get to know diff. people]
2.			
3.			
4.			

Instructions: Indicate each candidate's competency rating in the appropriate columns below, and then add the ratings together across the row to determine each candidate's total score. After adding the ratings across competencies, indicate with an "X" the Hiring Recommendation based on the range within which the candidate's score falls.

candidate name	outgoing & promotes diversity	sophistication & aspiration	appearance & sense of style	total score	hiring recommendation: highly recommended	hiring recommendation: recommended	hiring recommendation: not recommended
Samantha Ehauf	[2]	[2]	[1]	[5]			[X]

hiring recommendation	scores
outstanding highly recommended	appearance = 2 or 3 and total score = 8 or 9
meets expectations recommended	appearance = 2 or 3 and total score = 6 or 7
below expectations not recommended	appearance = 1 or total score = 3 to 5

section III: interview questions & notes

Choose 1 question from each group. Repeat the question to each candidate. Questions in italics are probe questions that you may or may not need to ask in order to get at specific behavioral examples.

sophistication & aspiration		
name	group a questions	group b questions
	1. Why do you think you will be successful at Abercrombie & Fitch? 2. What things are you successful at? *Please give me an example?* 3. How have you typically reacted when things were not going your way? *What did you do?*	1. How would you describe the Abercrombie style? 2. What distinguishes the Abercrombie brand from other brands? 3. How do you think Abercrombie wants to be perceived by its customers?
1.	[Been in retail Knows how to sale things to people]	[Preppy! last longer/does not look cheap!]
2.		
3.		
4.		

Abercrombie & Fitch

Store Associate Handbook

Policies and Benefits for All Store Associates

This section of the associate handbook highlights policies and benefits that are applicable to all full-time and part-time store associates.

INTRODUCTION ..... [3]

COMPANY DIRECTORY ..... [5]

GENERAL INFORMATION ..... [6]

- FULL-TIME/PART-TIME DEFINITIONS ..... [6]
- REGULAR/SEASONAL DEFINITIONS ..... [6]
- OVERTIME EXEMPTION DEFINITIONS ..... [6]
- LENGTH OF SERVICE ..... [6]

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- EMPLOYMENT ..... [7]
  - Employment at Will ..... [7]
  - Discrimination and Harassment ..... [7]
  - Respect Policy ..... [9]
  - Americans with Disabilities Act ..... [10]
  - Non-Union Status ..... [11]
  - Employment of Minors (under 18 years old) ..... [11]
  - Associate Records ..... [12]
  - Performance or "Quality" Reviews ..... [12]
  - Pay Reviews ..... [12]
  - Transfers and Promotions ..... [12]
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  - Conflict of Interest ..... [13]
  - Resignations ..... [13]
  - Employment/Income Verification ..... [13]

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Record of Hours Worked ..... [14]
Partners in Growth ..... [15]
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Plan Administrative Information ..... [36]
Administration of the 401(k) Savings and Retirement Plan ..... [36]
Rights and Protections under ERISA ..... [36]

Incidents occur which demonstrate the associate has used poor judgment, failed to meet reasonable performance expectations, or failed to follow direction from management and which are serious enough in nature to warrant formal disciplinary action. In each case, immediate improvement is expected. Failure to make the necessary improvements can result in additional disciplinary action. Depending on the circumstances, a final warning or termination of employment may occur if performance issues are not resolved. Where deemed appropriate by management, an associate's employment may be terminated immediately and no UPN issued.

Appearance/Look Policy.
When people think of Abercrombie & Fitch, they think of lifestyle clothing with great attitude, a comfortable fit and the best quality. As an associate of Abercrombie & Fitch, you should always strive to project a professional image that is consistent with our reputation as the best in the fashion industry.

We realize that your manner of dress and grooming habits are highly personal and subject to your own tastes and preferences. We wish to respect your individuality and still maintain a consistent level of dress and grooming that represents what people expect from Abercrombie & Fitch.

We do not require that associates buy or wear clothing, accessories or other items from our stores. Associates should, however, wear clothes that are similar to the Abercrombie & Fitch brand. Associates are prohibited from wearing apparel that is clearly that of

a competitor (i.e. has an obvious label, name or logo of a competitor). If an associate is unsure about whether a particular item of apparel is permissible, the associate should ask the Store Manager for clarification.

Expectations of all associates:

- Represent Abercrombie & Fitch with natural, classic American style;
- Look great while exhibiting individuality;
- Project energy and enthusiasm make the store an inviting place that provides an exciting and energetic social experience for the customer;
- Greet and assist customers providing excellent customer service;
- Maintain the store presentation as directed by store management.

Diversity: Abercrombie associates represent American style. America is diverse, and we want diversity in our stores. We do not discriminate, and will not tolerate discrimination in hiring based on gender, age, race, color, religion, national origin, sexual orientation, marital status, veteran status, citizenship, ancestry, or disability.

A&F Look Policy Guidelines

Hairstyle: For men and women, a clean, natural, classic hairstyle is acceptable.

Makeup: Makeup must be within these guidelines, and must be worn to enhance natural features and create a fresh, natural appearance.

- Foundation, base or blush can only be worn if it is applied in such a way as to look completely natural (i.e., to match natural skin tone);
- Eyebrow pencil, eye liner and eye shadow are acceptable in natural color;
- Lipstick should be very natural in color and applied to compliment the associate's appearance.

Fingernails: Clean, presentable fingernails are a must. Fingernails should not extend more than 1/4 inch beyond the tip of the finger. Although a natural nail is preferred, if polish is worn, it should be clear or natural in color. Any color of polish other than a natural color is unacceptable and the associate will be asked to remove the polish prior to beginning his or her shift. Toenail polish may be worn in an appropriate color. Associates should ask the Store Manager what is considered an appropriate polish color.

Facial Hair: Facial hair, including mustaches, goatees, and beards, is unacceptable.

Tattoos: Inconspicuous tattoos are acceptable, as long as they represent the Abercrombie look as determined by your Manager.

Clothing and Footwear: Clothing and footwear style should be similar to the Abercrombie & Fitch brand. Clothing should also be consistent with the season (e.g., a heavy wool turtleneck sweater should not be worn in 90 degree heat). Even though A&F has a Gym Issue clothing line, clothing worn at work should not be too informal (e.g. no gym shorts). Clothing choices should be clean and classic, not

provocative (e.g., tanks should be worn with an undergarment). Footwear should not be dirty or have excessive tears. All clothing and footwear choices should reflect what a customer would expect to see when they think about the Abercrombie brand. Any questions pertaining to appropriate clothing or footwear should be addressed to the Store Manager.

Caps: Even though A&F sells caps, they are considered too informal for the image we project. Caps are not allowed to be worn on the sales floor.

Jewelry: Jewelry must be simple and classic. If the first thing a customer notices on an associate is his or her jewelry, then it does not meet this requirement. No more than two earrings in each ear can be worn at a time for women. Earrings should not be larger than a dime and should not dangle. Earrings can be clip-on or pierced, but must be worn on the bottom of the earlobe. The shape of the earring must be in good taste. Men are not allowed to wear earrings.

No other pierced jewelry is appropriate (e.g., belly button rings, nose rings, pierced lips, tongue rings, and eyebrow piercings). If jewelry does not meet these guidelines, the Store Manager may ask the associate to remove the jewelry.

Compliance: Every associate and Management Team Member is responsible for following the A&F Look Policy. Ensuring consistent administration of the guidelines of the A&F Look Policy is the responsibility of all levels of management.

- All A&F associates and Managers are covered by the policy.
- Associates who do not meet the A&F guidelines will be informed of the specific area(s) of non-compliance and told that the Guidelines must be met immediately.
- Appropriate disciplinary action will be taken to ensure compliance with the policy, up to and including termination of employment.

Smoking

Smoking is not permitted anywhere on Company premises. Smoking is only permitted in designated mall areas or outside of the store.

Drug-Free Workplace

Abercrombie & Fitch is committed to achieving and maintaining a drug and alcohol free workplace. The use of illegal drugs, on or off the job (including meal and break periods) by an Abercrombie & Fitch associate will not be tolerated and will result in disciplinary action up to and including termination. Illegal drugs include illegal narcotics, inhalants, any substance used to achieve a chemically induced effect on the mind (except tobacco), as well as prescription drugs not prescribed for the associate by a physician ("illegal drugs"). Abercrombie & Fitch associates who use illegal drugs are responsible for changing their behavior and, if necessary, seeking rehabilitation. The cost of rehabilitation services provided to associates may be reimbursable under the associate's group benefit plan (see medical coverage section of the Full-Time Associate Addendum of this handbook for details of cover-

age). Abercrombie & Fitch will not tolerate an associate coming to work or being on company property under the influence of alcohol or illegal drugs, or the use of these substances while at work on company property. For the purposes of this policy, company property includes all stores, offices, facilities, parking lots and any other locations recognized as a place where Abercrombie & Fitch does business.

Abercrombie & Fitch reserves the right to require an associate to be tested for the presence of alcohol or drugs, or to resign, when there is reasonable suspicion of drug or alcohol use while at work. Associates who violate this policy will be disciplined, up to and including termination.

The serving and consumption of alcoholic beverages at functions planned, sponsored or hosted by Abercrombie & Fitch are reserved for group meetings, or celebrations where no further business is anticipated for the day, and must otherwise be in compliance with all state laws. Prior approval from Human Resources is required in order to have an Abercrombie & Fitch sponsored or hosted event.

PLAINTIFF'S EXHIBIT 6

PLAINTIFF'S
EXHIBIT
7

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Civil Action No. 09-CV-602-GKF-FHM

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

v.

ABERCROMBIE & FITCH STORES, INC.,
D/B/A ABERCROMBIE KIDS

Mar. 4, 2011

DEPOSITION OF RANDALL W. JOHNSON

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[21]

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Q. So as a district manager you had the authority to hire and fire employees; is that correct?

A. Yeah. Yes, sir.

Q. You kind of hesitated. Why don't you explain that for me, then.

A. Well, I mean, we didn't do the actual hiring in the store because, like I said, I had seven stores. Every store has about a hundred employees, so I can't hire and

fire a hundred employees in seven different stores, so they were—they were solely towards the store manager's responsibility. Like I said, I just [22] interviewed and hired MITs.

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[34]

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Q. Okay. Okay. And do you recall in 2008 who was the HR manager or the Abercrombie Kids store?

A. It was Heather.

Q. Was that Heather Cooke?

[35]

A. Yes, sir.

* * * * *

[43]

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Q. (By Mr. Lee) Let's go to June of 2008 if I can take you back. Do you recall an applicant by the name of Samantha Elauf?

A. Yes, sir.

Q. Had—prior to Ms. Elauf ever making application to Abercrombie & Fitch, did you know her?

A. No, sir.

Q. And did you never know of her?

A. No, sir.

[44]

Q. And—well, why don't you just tell me what you remember about the whole application or—of Samantha Elauf as we sit here today.

A. Okay. Heather Cooke interviewed Samantha. I was in Oklahoma City at my Penn Square store. She—she called me and asked me if she could hire this girl, Samantha, and I asked her did she do an interview guide. She said yes. We went through some of the questions, and we went over some look policy questions, and she wasn't complying with that, so at the end of the concession—or discussion I told Heather, I was like, is she compliant with the guideline, does she pass, and she was like no, and then I was like, well, there's your answer. You cannot hire her.

Q. Okay. Well, let's break that down. So what exactly did Heather say she was not compliant with?

A. Dress code.

Q. And what did she say that was not in compliance with?

A. She wearing a hat, or a head scarf.

Q. And did Ms. Cooke tell you why Samantha was wearing a head scarf?

A. No, sir.

Q. So it is your recollection today that Ms. Cooke didn't explain to you that she thought [45] Ms. Elauf was wearing the head scarf for religious reasons?

A. No, sir.

Q. And can you tell me how—how the head scarf is not compliant with the dress code?

A. It's in our code of conduct or in look policy that you cannot wear a hat while on the floor.

Q. I'm sorry. Could not wear a what?

A. A hat—

Q. Okay.

A. —while on the floor.

Q. I'm going to hand you what's been previously marked as Exhibit No. 8. And not to kill any more trees, this is from a previous deposition. I'm just going to have you turn to the look policy in that particular handbook to see if you can find it right quick. I believe it's on page 29.

A. 29. Yep.

Q. First of all, is that document, Exhibit 8, is that the Abercrombie & Fitch handbook, store handbook?

A. Yeah. I'm guessing yes.

Q. Okay. Well, I mean, are you familiar with the document enough that—have you ever read—

A. Yes, sir.

Q. —the store associate handbook?

[46]

A. Yes, sir.

Q. All right. I understand that—so on the look policy on—is that the Abercrombie dress code which is called look policy on pages 29—

A. Yes, sir.

Q. Okay. And so when you say you're referring to not able to wear a hat, could you tell me where that is in the look policy?

A. It's not in this revised version, but there—this has been revised since I've been in the company probably four or five times, so—

Q. And when you say it's not in the policy, can you—you're saying not wear a hat or cap is not in there on page 29 or 30?

A. Let's see. No. It says—it says a hairstyle needs to be—classic hairstyle is acceptable.

Q. Okay. What page are you reading from?

A. 29.

Q. Okay. If you'll turn to page 30 and see if there's a cap provision or a hat provision that you were referring to.

A. Clothing.

MR. CLARK: You want me to point him to the paragraph that starts caps?

[47]

MR. LEE: That's fine.

THE WITNESS: Oh, I'm sorry. All right. Yeah.

Q. (By Mr. Lee) So there is—can you just read that for the record what's the cap policy?

A. Just, you know, sales caps, they're considered too informal for the image we project. Caps are not allowed to be worn on the sales floor.

Q. Okay. And so it's your understanding that when Ms. Cooke was talking to you about a head scarf, is this the provision you were telling her that was not compliant with the dress code?

A. Yes, sir.

Q. Is there any other provision in the Abercrombie look policy that deals with wearing a head scarf?

A. No, sir.

Q. And was it your determination that if somebody's wearing a head scarf, then they're not in compliance with the look policy for Abercrombie?

A. In my eyes a head scarf and a cap is the same thing.

Q. Okay. Have you ever seen a head scarf worn by a Muslim woman?

A. On TV.

[48]

Q. Okay. Never shopping in any of the stores?

A. No, sir.

Q. I'm going to hand you what's been previously marked as exhibits—Plaintiff's Exhibits 6 and 7 and ask if you've ever seen these photographs before.

A. No, sir.

Q. Okay. I'm going to represent you and its' been testified that that is Samantha Elauf.

A. Okay.

Q. Is it your recollection that you had never seen her in the stores before?

A. No, sir.

Q. Okay. And I'm going to represent to you that the head scarf she's wearing is very similar to the head scarf she was wearing on the day that she applied or was—

A. Okay.

Q. —interviewed by Ms. Cooke.

A. Okay.

Q. So you're telling me that the head scarves being worn in Exhibit 6 and 7—Exhibits 6 and 7 would not have complied with the Abercrombie look policy?

A. No, sir.

Q. And if you had a question—hypothetically if you had a question whether a head scarf was—was the [49] same as a cap, who would you have called to determine whether or not that complied with the look policy?

A. I would have called my HR manager.

Q. So the HR department rather than the—Eric, Mr. Hoffman; is that correct?

A. Yes, sir.

Q. So is it your understanding that the HR department is responsible for compliance with the look policy?

A. Yes, sir. I mean—yes, sir.

* * * * *

Q. (By Mr. Lee) Mr. Johnson, we were talking previously about the telephone call that you had with Ms. Cooke. I just wanted to go over a few things with [50] that.

A. Okay.

Q. So about how long a phone call did this—did this conversation transpire? How long?

A. Maybe five minutes, ten at the most.

Q. And how did she—when she called you, now did she present the problem to you?

A. She called and said she just went through a group interview. She said she has this—this girl, Sam, that she wants to hire but she had some issues with her with her wearing a head scarf, and she wanted to know what she should do in the situation.

Q. Did you say—did you ask Ms. Cooke a question along the lines of can she take the head scarf off?

A. Did I ask her that?

Q. Yes.

A. I can't recall.

Q. And did she have—so at that time that she's calling, was there any other issues dealing with non-compliance with the dress code other than the head scarf?

A. Not that I know of, no, sir.

Q. Was there any other issues with regard to the interview guide or not meeting the standards on the [51] interview guide?

A. Not that I know of.

Q. Not that Ms. Cooke related to you; is that correct?

A. Yes, sir.

Q. Was it—was it your impression that Ms. Cooke would have hired Samantha Elauf except for wearing of the head scarf?

A. Yes, sir.

Q. In fact, did she state that to you?

A. That she would, yes, sir.

Q. And I can't recall your exact phraseology, but you basically instructed—well, let me back up. So when Ms. Cooke—she was asking your permission to go ahead and hire her; is that correct?

A. She was asking my permission, yes, sir.

Q. And your—and you told her what?

A. Her response is she's not compliant with dress code, that she cannot be hired.

Q. Did you have a discussion on how she might come in—how the applicant might come into compliance with the dress code?

A. Not that I recall.

Q. Was that—looking back, was that—how many time had Ms. Cooke asked you about—questions about [52] hiring applicants?

A. She never has in the past.

Q. So this was an unusual circumstance; is that correct?

A. Yes, sir.

Q. Did you at that time think we might want to call HR at that time?

A. No, sir, I didn't.

Q. And did—during this conversation did Heather Cooke tell you that she had already filled out the interview guide and given her the grade on the evaluation that she was—what's the word I'm trying to say—she was eligible for hire?

A. She said she filled it out, but she didn't say she was eligible for hire.

Q. But did she already talk—or she didn't tell you that she had already made a score on the grading scale on the evaluation standards?

A. I can't recall that.

Q. So the best of your recollection did you ever tell her that she needed to go back and fill out a different form?

A. No, sir, I never did.

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Q. And let's go back to—to the Abercrombie Kids store. Do you recall during the time that you were the district manager whether or not they had allowed anybody to—any employees who worked there that were allowed to have an exception to the look policy?

A. There's no one that had exceptions.

Q. Were you ever aware of, I guess, the—Mr. McJilton allowing a young lady to wear a denim skirt that was not in compliance with the look policy?

A. I was never aware of it.

[70]

Q. And if Mr. McJilton was allowing this person to wear that or granted the exception, who was he supposed to get that cleared through?

A. He was supposed to get it cleared through the DM and the HR department.

Q. And was there a difference as to granting any exceptions to the look policy as to somebody working in the impact position as opposed to the model position?

A. was there any exception? No. They were all the same guidelines.

Q. And that—the same guidelines, both positions are covered by Plaintiff's Exhibit No. 8; is that correct?

A. Yes, sir.

Q. And looking at Plaintiff's Exhibit No. 6 and 7, would Samantha, to your own opinion, been a good candidate to hire as a model except for the head scarf?

A. If she was—yeah, she would have been.

Q. So now we've had—we're going back to post picket line, I guess is the demarcation line. Other than corporate counsel, do you recall having any other discussions with anybody from corporate about the nonhiring of Samantha Elauf?

A. No, sir.

Q. During the time that you were—from 2001 to [71] 2009, were you—were you aware that Abercrombie was actually allowing exceptions to look policy in other stores?

A. Was I aware?

Q. Yeah, nationwide.

A. No. I mean, if there was an exception, you would have to go contact your HR manager and they would make those exceptions.

Q. What I'm trying to find out is if you were aware that in other stores in Abercrombie & Fitch they had actually allowed store models to wear a yarmulke.

A. I wasn't aware of that, no.

Q. In your opinion would a yarmulke not have been allowed in any of your stores in the Oklahoma region?

A. My opinion? I mean, it's still a hat. It's still a ball cap or a cap.

Q. And that's what I was trying to determine. So in your opinion as when you were a district manager you wouldn't have seen any difference between if an applicant wanted to wear a yarmulke versus a head scarf; is that correct?

A. No, sir. Or a ball cap or a helmet for all that matters. It's still a cap.

Q. Let's take your ball cap example. So if an applicant said—came up and said, hey, my religion [72] says I need to wear this ball cap while working, you still would have denied—

A. Still would have denied them, yes, sir.

Q. Well, let's walk through the steps of the person with person with religious ball cap. If you had become aware or the assistant manager said, hey, this person says they have to wear this ball cap for the California Angels and said it's because of religious purpose, what would the process have been for considering that ball cap?

A. For considering, we would have to contact my HR director, and they would make that exception or determination if we could hire them or go forward with that applicant.

Q. Okay. And during your time as a district manager had you ever contacted your HR regional manager to talk about or discuss somebody who had requested an exception to the look policy?

A. I've never had to make an exception, no, or make—or call HR to make an exception.

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[73]

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Q. Okay. And as to any—your training, do you recall any actual training on religious accommodation?

A. Any training?

Q. Any training.

A. Besides just roll it up to HR and they make the decision, that's it.

Q. That's kind of what I was probably getting at, is, how would you know if somebody was requesting a religious accommodation?

A. I mean, I would—hopefully they would ask, and then we would go from there and be like, this is a religion accommodation, and we'd ask our HR manager about it.

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[86]

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Q. Going back to your conversation with Heather Cooke when she was asking whether or not she could hire Samantha Elauf, were you aware that she's testified that she did explain to you that the reason Samantha wore a head scarf was because of religious reasons?

A. She never said that to me.

Q. Okay. And were you aware that Heather Cooke has also testified that you made some remark about a person could paint themselves green and call it a religion?

A. Don't recall making that conversation.

Q. Okay. And Ms. Cooke has also testified that in that conversation with you about Samantha Elauf it was her testimony that she stated that she wore the scarf for religious reasons because she, she being Samantha Elauf, was Muslim. Do you recall that in your conversation?

A. No, sir.

Q. Is that something that you would forget?

A. Would I forget? I mean, if it's a religion issue I'd have to—as soon as I—I have to roll it up to HR. She never said that. She said she wore a [87] **head scarf.**

Q. Okay. So these statements that Ms. Cooke is testifying that in a conversation she had with you, are

you just not recalling those conversations or she did not make those statements to you?

A. She didn't make those statements to me.

Q. And the statement about the person being painted green, you said you did not make that statement?

A. No, sir.

Q. And did you—Ms. Cooke also testified that you told her to change the interview evaluation score so that Ms. Elauf could not—would not have a high enough score to be recommended for hire. Do you recall saying that to her?

A. I never said that.

Q. Did you ever tell her to go back and fill out the evaluation standard guide?

A. No. She was supposed to be filling that as she went through the interview guide.

Q. Do you recall telling Ms. Cooke that if she talked about any of the reasons why Samantha Elauf was not hired that our jobs could be in jeopardy?

A. I do not recall.

Q. That one is that, you don't recall or is that [88] something you could have said but you don't remember?

A. I didn't say that. I mean, if she did the proper procedures and did what she was supposed to do, at the end of the day if she—she violated dress policy we can't hire her.

Q. No, I understand. But after the picket line came out, did you ever tell your store managers that their jobs could be in jeopardy if they talked about why Samantha Elauf was not hired?

A. I mean, if they talked to reporters they violated policy. They could be fired for that, yes, but I never said anything about Samantha, no.

Q. Okay. And if they just talked to reporters, was the instruction given not talk to reporters?

A. Not, yes.

Q. Okay. Did that go for talking to anybody else about the—

A. About the circumstance, yes, sir.

Q. Okay. And did—did you feel that was a threat to the managers that their job would be in jeopardy?

A. Not as—I mean, staying within policies that they shouldn't, no.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Case No. 09-CV-602-GKF-FHM

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PLAINTIFF

v.

ABERCROMBIE & FITCH STORES, INC., DEFENDANTS

Jan. 10, 2011

SUPPLEMENTED WRITTEN TESTIMONY OF DR. ERICH A. JOACHIMSTHALER

I. Introduction and Credentials

I, Erich Joachimsthaler, Ph.D., hereby states as follows:

Qualifications

1. I am the Chief Executive Officer of Vivaldi Partners, a strategic marketing and brand strategy consulting firm with headquarters in New York and offices in Munich, Hamburg, Zurich and London. I am also a Visiting Professor of Business Administration at IESE (Instituto Superiores de la Empresa) in Barcelona, Spain and New York, one of the leading global business schools

offering MBA and global executive education programs.

2. I am recognized as an authority on marketing strategy and building strong brands and have been a professional in the branding and marketing field for more than 20 years. I have provided expert brand and marketing advice to a diverse set of clients in industries such as fashion, entertainment, retailing, automotive, durables, and consumer packaged goods, for all segments of consumers from kids to teenagers and adults. I have assessed the value of brands and their potential for development in several hundred situations, and I have led research in the building of strong brands or well-known trademarks.

3. Before founding Vivaldi Partners, I co-founded a company with Professor David A. Aaker called Aaker-Joachimsthaler & Partners, which we sold to Prophet in 1999. I was a Chairman at Prophet before founding Vivaldi Partners.

4. I have previously held faculty positions at the Darden Graduate School of Business Administration at the University of Virginia, the University of Southern California, the University of Houston in Texas, and IESE (Institute Estudios Superiores de la Empresa) in Barcelona, Spain.

5. In 1988, I completed a post-doctoral fellowship at the Harvard Business School. In 1985, I received my Ph.D. in Business Administration (with emphasis on statistics and marketing) from the University of Kansas. In 1981, I received my

Master's Degree of Science (with emphasis in quantitative methods) and in 1979, I received my Economics degree from the Fachhochschule Giessen-Friedberg, Germany.

6. I have published extensively. There are over 60 of my articles in peer-reviewed academic as well as professional journals and magazines such as *Harvard Business Review, Journal of Marketing Research, Journal of Marketing, Journal of Consumer Research* and *Sloan Management Review.* My last two books are *Brand Leadership: The Next Revolution in Building Strong Brands*, which I co-authored with David Aaker, published by The Free Press in January 2000 and *Hidden in Plain Sight: How to Find your Company's Next Growth Strategy*, published by the Harvard Business School Press in May 2007. A more detailed summary of my training, past experience and prior testimony appears at the end of this document.

7. I am being compensated at my normal and customary hourly rate. My consulting firm is also being compensated for the time spent by its research staff at their normal and customary hourly rates. The individuals involved in this matter and their respective hourly rates are as follows: Erich Joachimsthaler—$700; Tammy Tan—$350; Andrew Holland—$250; and Julia Wolfe—$200.

Summary of Issues

8. I have been engaged by the Attorneys of Abercrombie & Fitch Stores, Inc. ("ANF") to render

my expert and professional opinion on ANF's branding and marketing strategy regarding the Abercrombie & Fitch brand, and abercrombie which offers similar merchandise to younger tween consumers (collectively, "Abercrombie"). Specifically, I was asked to consider the following:

- The nature of apparel marketing and retailing to tweens and teens, and the importance and value of brands and brand management for an apparel brand such as Abercrombie.
- The Abercrombie brand and the importance of the brand experience. In particular, the role of the in-store retail experience in conveying the Abercrombie brand identity and associations to its target segment, and the role played by store employees in this connection.
- The role and importance of Abercrombie's Employee Appearance/Look Policy in managing the Abercrombie & Fitch and abercrombie brand.

My opinions appear in detail in this document.

9. In order to form my opinions detailed in this report, I reviewed, among other materials, the following:

- Research from the popular press, including print media and articles related to apparel, retailing, tween and teen culture

- Research from empirical studies and written work in academic journal articles, books, and other academic literature related to brands and branding, and teen attitudes and behavior
- Research on various online communities and social networking websites such as Facebook and YouTube, and specific teen apparel and lifestyle websites such as http://www.ae.com (American Eagle Outfitters), http://www.aeropostale.com, and http://www.roxy.com
- ANF brands' websites: http://www.abercrombie.com, http://www.hollisterco.com, http://www.gillyhicks.com, http://www.abercrombiekids.com
- ANF's Annual Report for the fiscal years ended January 30, 2007 and 2010
- The Complaint related to this case, and case documents numbered A&F000001 through A&F002679
- Documents from ANF:
    - Abercrombie & Fitch New Hire Forms/ Store Associate Handbook
    - Abercrombie & Fitch Employee Quality Review Document
    - Abercrombie & Fitch Career Opportunities Booklet
    - Various issues of weekly *HR 411* Bulletins

- Various issues of the *Today at Abercrombie* Program
- Abercrombie Employee Styling Guides
- Abercrombie Employee "Greeter" Photos
- Abercrombie & Fitch Cast of Back to School Photo book 2008
- abercrombie floorset implementation instructions

- My own and my colleagues' extant work on conceptual theories, empirical research, and professional work on cognitive psychology, branding and marketing strategy.

10. In addition to the above, my team of consultants conducted interviews with executives from ANF. These executives were Chad Moorefield, Director of Stores for the Midwest on December 7, 2010; Deon Riley, Vice President of Human Resources for the Stores Organization, and Jessi Passalacqua, Director of Stores for the West Coast Region, who were interviewed on April 23, 2009; and Sunny Traub, Senior Brand Director of abercrombie and Ruehl, and Brandon Tonniges, Senior Director of Abercrombie & Fitch and abercrombie, who were both interviewed on May 4, 2009. We also made store visits to the abercrombie stores in Paramus and Willowbrook Mall, New Jersey, and the flagship Abercrombie & Fitch Store on Fifth Avenue in New York City.

Summary of Conclusions

11. Based on my analyses outlined in this report, I arrive at several conclusions which are explained and amplified in the detailed analysis that follows in this report:

    i. ANF's brands—abercrombie, Abercrombie & Fitch, Hollister and Gilly Hicks—are a critical component of ANF's business strategy, enabling ANF's business success and its ability to compete effectively in the teen and young adult fashion apparel category.

    ii. Tween and teen consumers exhibit consumption and use behaviors and purchase decision-making that are heavily identity-defining and self expressive. That is, they don't merely consume products for their utility, but rather, because of their symbolic meanings.[1] Clothing and brand names are a way of forming and expressing their personal identities. Authenticity, peer approval and accepted brand names are critical factors for brands to become part of their consideration sets. The consideration set is the set of brands that consumers find acceptable and worthy of further evaluation. To compete for tween and teen attention, ANF's brands have to deliver the authenticity, peer

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[1] Cleopatra Veloutsou and Luiz Moutinho (2008), "Brand Relationships Through Brand Reputation and Brand Tribalism," *Journal of Business Research*, 6 August 2008 (doi:10.1016/j.jbusres.2008.05.010)

approval, and need for self-expression desired by their target customers.

i. ANF has been extremely successful among its target segments because of its proactive and highly disciplined brand management practices. Through ANF's brand management, its brands have developed strong and richly brand identities with depth and texture that are compelling, appealing and desirable to their targets. These brand identities are brought to life through highly sensory in-store brand experiences that convey the Abercrombie brand identity of effortless confidence and an aspirational All-American 'preppy cool' lifestyle that embodies the brand attributes of "casual, classic, confidence, intelligence, privilege and a sense of humor."[2]

ii. The Abercrombie brand identity is communicated through no TV advertising and only minimal print advertising, and instead, through direct engagement through the in-store brand experience, including interactions with store employees. Additionally, for Abercrombie's tween and teen target customers, these store employees act as aspirational peer role models.

iii. In the field of apparel retailing, store employees play an important role in communicating the overall brand experience and desired brand image to consumers. The Abercrombie &

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[2] AFI Annual Report 2007, p. 6

Fitch Employee Appearance/Look Policy plays a critical role here, as it ensures consistent and positive portrayals of the Abercrombie brand in the important in-store environment.

iv. An employee's look or dress that is contrary to the guidelines of the Employee Appearance/ Look Policy is identity distorting and would appear visibly "off-brand" to the Abercrombie target, and negatively impact Abercrombie's ability to communicate a consistent "on brand" experience to its target consumers. In the cut-throat and fast-paced competitive environment of fashion and apparel retailing to smart, discerning and fickle teen consumers, this situation could have a negative impact on ANF's business. There is potential to cause consumer confusion and decrease brand preference and value perceptions for the Abercrombie brand. The risks to ANF include a decreased ability to effectively market to its target and establish strong emotional bonds with them; a decreased ability to retain existing customers; and increased costs of marketing and merchandising its products successfully.

II. The Role of Brands in Apparel Retailing

12. The word brand originates from the Old Norse word "brandr," which means to burn. Indeed, branding or burning was (and is) the method by which farmers mark their livestock to identify who owns them.[3] In this sense, a brand is a distinguishing name and/or symbol intended to identify services or goods.[4]

13. Today, academics, marketers, advertisers and others who manage brands conceptualize a brand as having two key components: the tangible, and the intangible. The tangible components or physical manifestation of a brand may include names, logos, images, or designs. The more important components of the brand, however, and those that give it meaning and create value, are the intangible components. These components include thoughts, images, attributes, associations, feelings, emotions and experiences.

14. When these components are brought together in a unique manner, the brand creates meaning for consumers, and has value. In order to develop value, a brand needs to connect with and engage consumers, creating a meaning for them that in-

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[3] Keller, Kevin L. (2003), Strategic Brand Management: Building, Measuring, and Managing Brand Equity, 2nd Ed., Englewood Cliffs, NJ: Prentice-Hall, p. 3

[4] David A. Aaker, Managing Brand Equity, The Free Press, 1991, p. 10

tersects with their daily lives.[5] This value is often defined in terms of functional benefits, emotional benefits, and/or self-expressive benefits. These three benefits make up a brands value proposition.[6] Fashion apparel brand's offer significant functional, emotional and self-expressive benefits to consumers. These could be described as follows:

- Functional benefits (e.g. I wear Gap because their clothes are affordable and durable)
- Emotional benefits (e.g. wearing Bebe makes me feel confident, sexy, and flirtatious)
- Self-expressive benefits (e.g. by wearing Chanel, I convey that I am sophisticated and classically elegant).

15. These benefits combine to create value to consumers at the brand-relationship level. In my book with David Aaker, *Brand Leadership*, I describe how functional, emotional, and self-expressive benefits translate into the brand-customer relationship—that is, the brand experience that a consumer has with a brand. Based on the elements of the brand identity and benefits these elements imply, consumers ascribe meaning to the brand. Meaning creation is highly com-

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[5] Joachimsthaler, *Hidden in Plain Sight*, Harvard Business School Press, Boston, MA, 2007

[6] David A. Aaker and Erich Joachimsthaler, *Brand Leadership* (The Free Press, 2000), pp. 49-50

plex and the result of a well-known and oft-researched interpretation process.[7] The final brand relationship that consumers have with a brand can be characterized or summarized in typical relationship constructs (e.g. a partner, a mentor, a friend, a role model).[8]

16. A brand, thus, stands for a set of associations or characteristics in consumers' minds. Metaphorically speaking, a brand can be viewed much like a box in someone's head. As people receive information about a brand (positive or negative), they file it away in the mental box labeled with the name or logo or symbol of the brand. After repeated exposure to or experience with a brand, the consumer will have a number of things, information or perceptions about the brand stored in this mental box.[9]

17. Although brands are generally considered intangible, they are often amongst the most valuable assets of a company. Strong brands can be worth millions, and even several billions of dollars.[10] In the latest *Interbrand Global Brand*

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[7] Richins, Marsha L. (1994), "Valuing Things: The Public and Private Meanings of Possessions," *Journal of Consumer Research*, 21 (3), 504-04

[8] Aaker, David, and Erich Joachimsthaler, *Brand Leadership* (The Free Press, 2000), pp. 40, 49-50

[9] Aaker, David, Building Strong Brands, New York, NY, The Free Press, 1996

[10] Lev, Baruch, *Intangibles*. Washington, DC: Brookings Institution Press, 2001

Valuation Study 2008, Coca-cola was the world's most valuable brand, contributing $67 billion dollars to the company's value, while IBM was the second most valuable brand at $59 billion dollars.[11] Amongst this list were a number of apparel brands: Louis Vuitton, ranked 16th with a value of $21 billion and Gucci, ranked 45th, with a value of $8 billion.

18. In highly competitive and fragmented industries such as apparel and specialty retail, brands are even more important. These are markets that constantly "bombard" consumers with advertising campaigns and fashion/lifestyle messages, and it is common for consumers to switch readily from one brand to another.[12] For companies such as ANF. a strong brand is a powerful weapon. A strong and recognizable brand is the key to driving increased store traffic that can lead to higher sales. Apparel companies and retailers constantly strive to create well known brand names that consumers will identify with high quality and/or fashionable products. They invest in their brands so that they can raise awareness, build loyalty among consumers, and use the power of the brand to dissuade consumers from switching to competitors.

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[11] http://www/interbrand.com/best_global_brands.aspx

[12] Standard and Poor's Industry Survey, Apparel & Footwear: Retailers & Brands, Marie Driscoll and Pearl Wang, February 12, 2009

Benefits to Apparel Retailers

19. A brand provides a number of benefits to retailers (or brand owners) and consumers. In terms of benefits to specialty retailers, strong brands provide a means of differentiating their products from the competition in order to generate consumer preference and choice, charge higher prices, and achieve higher customer loyalty. A strong brand can help to sustain relevance amidst constantly changing tastes, and rapid turnover cycles of consumers. This applies especially for apparel targeting tweens and teens. For example, a typical teen target market of 14-18 year-olds (or a tween market of 9-14 year olds) means that every 5 years, an apparel company is addressing a completely new group of consumers. Fashion companies targeting teens must therefore carefully manage their brands through constant renewal of their brand positioning and user imagery, to maintain relevance with each new cycle of consumers.

20. Another benefit of a strong brand is providing the basis for brand extensions, which involve using an existing brand name to introduce new product offerings, access new market segments or new categories, and generate new revenue streams as a result. Examples of brand extensions in the apparel industry include Nike Golf, Gap Kids, Levi's Red Tab, and Diesel Style Lab.

21. Yet another important benefit is building and sustaining competitive advantage over other apparel

retailers and brands in the market. Apparel companies with a strong orientation toward building brands achieve advantages in the following dimensions: merchandising, communications, trading format, and customer service.[13] For specialty apparel retailers such as ANF, superior brand strategy often translates into a sustainable competitive advantage: it creates barriers for competitors to be able to lure away loyal customers; it gives distribution leverage by enabling ANF to demand and get the best mall locations; and it gives more pricing flexibility by creating a "must have" perception to the consumer—enabling a premium pricing strategy.[14]

Benefits to Consumers

22. From the consumers perspective, brands serve to identify the source or maker of a product and allow consumers to assign responsibility to the brand owner. A strong brand helps to reduce the perceived risk inherent in their purchase decisions. For teens and young consumers, apparel products can carry significant risks of style perceptions and peer-group acceptance. Consumers

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[13] Kerry Bridson and Jody Evans. The Secret to a Fashion Advantage Is Brand Orientation, *International Journal of Retail & Distribution Management*, Vol. 34, Number 8, 2004

[14] Standard and Poor's Industry Survey, Apparel & Footwear: Retailers & Brands, Marie Driscoll and Pearl Wang, February 12, 2009

cope with these risks by purchasing well-known brands.[15]

23. Strong brands also deliver emotional and self-expressive benefits to the consumer. The perception of the brand, combined with the actual features of the piece of clothing, can make a consumer feel completely different emotionally: sexy, comfortable, trendy or exclusive, for example. Consumer purchase decisions in fashion and apparel often take into account the emotional aspects of the brand. As fashion items, consumer apparel brands offer significant self-expressive benefits to consumers who wish to project a certain image or persona to others. A wearer of a certain brand of jeans may express to others that he or she is stylish, young and hip (e.g. 7 for All Mankind jeans), or no-frills and unpretentious (e.g. Levi's jeans).

24. Because of the benefits of brands to consumers, consumers tend to behave in a positive way toward strong brands. Consumers tend to exhibit (a) a greater willingness to consider the brand's products, (b) a greater receptivity to marketing information about a brand's products, (c) a stronger desire or aspiration for the brand's products, (d) a greater loyalty and willingness to purchase the brand again, (e) a greater tolerance toward the brand in case of product failure or problems, (f) a greater willingness to pay for the

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[15] Kevin Lane Keller, *Strategic Brand Management*, Prentice Hall, Upper Saddle River, New Jersey, 2003

brand's products, and (g) a greater willingness to recommend the brand to other consumers. In the highly competitive world of apparel and fashion retailing, these are all the more vital for companies such as ANF

25. In summary, strong brands are hugely valuable assets that provide enormous benefits to apparel retailers and their brands. For all these reasons, ANF's brands are an absolutely business-essential asset to ANF's business success. They enable ANF to create differentiation in the marketplace, establish relevance and meaningful relationships with its consumers, and also to create the kind of value for ANF and for its tween and teen consumers as described so far. In the following section, I will describe how the ANF's brands successfully operate in the teen fashion market, and the importance of the overall brand and retail store experience as part of this.

III. Fashion Marketing and Retailing Toward Tween and Teen Consumers

26. Abercrombie & Fitch's primary target customers are teens and college kids aged 18-22. Its extension abercrombie's primary target customers are pre-teens (tweens) and young teens. It offers clothing extending downward to those aged 8, and upward to those aged 16. Through the abercrombie extension of Abercrombie & Fitch, ANF is able to capture consumers as they move along their life journey. Tweens who want to emulate their older siblings or role models can do

so by wearing the same clothing styles, specially made just for them in a smaller size.

27. For pre-teen and teen apparel brands, generating preference, choice and loyalty among tweens and teens is no easy task. To be successful, these brands need to understand and adapt to the discerning and fickle teen psyche, attitudes, habits and behaviors. Based on this understanding, they must craft a marketing and retailing strategy that is believable and accepted by this segment's unique behaviors and attitudes. Finally, in order to be accepted by the teenage consumer, a brand must have a flawless execution, with enough flexibility built in to keep up with fast-changing tastes and demands of this fickle segment.

The Importance of Identity, Self Expression, and Peer Influence

28. Pre-teen and teenage years are a time of exploration, self-discovery and expression. Establishing an identity becomes increasingly important in the passage toward adulthood, and tween and teen behavior and purchase decision-making become increasingly based on the desire to express their identity. Teens especially are highly attracted to symbols, materials, and signals that showcase their identity during this time. For teens, clothing and brand names are a way of forming and expressing their identities and there-

fore, they are very particular about the brands they will associate themselves with.[16]

29. In addition to self expression, their friends, and peer approval are extremely important to the tween and teen consumer. During this time of self-discovery, pre-adolescents and adolescents aim to broaden their horizons beyond their families to form connections, and thus, their friends and being part of a group can become central to their lives.[17] Peer groups exert an enormous influence on them. For teens, it has been documented that they "tend to imitate each other, not adults. Teens spend almost all their time with peers and virtually no time with adults."[18]

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[16] See David A. Aaker and Erich Joachimsthaler, *Brand Leadership* (The Free Press, 2000), pp. 48, 49-50, Joachimsthaler, Erich, John Lastovicka, Optimal Stimulation Level—Exploratory Behavior Models, *The Journal of Consumer Research*, Vol. 11, No. 3 December 1984. Epstein, Robert, *The Case Against Adolescence: Rediscovering the Adult in Every Teen*, Quill Driver Books, Sanger, CA, 2007, p 277. Zollo, Peter, *Getting Wiser to Teens: More insights into marketing to teenagers*, New Strategist Publications, Ithaca, NY, 2004 p 325. Underhill, Paco, *Why We Buy: The Science of Shopping*, New York, NY, Simon & Schuster, 1999 pp 151-152

[17] Lerner, Richard M., The Good Teen: Rescuing Adolescence from the Myths of the Storm and Stress Years, Crown Publishers, New York, 2007, p 112, 160-161

[18] Epstein, Robert, The Case Against Adolescence: Rediscovering the Adult in Every Teen, Quill Driver Books, Sanger, CA, 2007, p 174

30. Peer pressure plays a similarly big role in tweens' buying behavior: a survey of 1,306 U.S. children showed that 36% of tweens ages 8-12 agree that they often pay close attention to advertisements to make sure they buy the right products and 36% also say that they often look to see what their friends use and buy when making purchase decisions, and 62% like to buy things their friends have.[19] As tweens navigate the passage between the safe embrace of family and the world outside the home, having the right merchandise seems vital to easing that transition, proclaiming them members of a new in-group.[20]

31. Peer approval and acceptance is especially important when teens make decisions like purchasing apparel. Clothes are a crucial way that teens can identify with their peer group.[21] Even during the browsing (or shopping) phase of an apparel purchase, teens are much more likely to bring friends along with them to gain their approval before they buy. Once they make their purchase decision (with their friends), they will then return to the store with their parents (who are usually paying for the item), who will assist

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[19] Online survey by Harris Interactive in collaboration with the University of Delaware's Lerner College of Business and Economics

[20] Kit Yarrow, a professor of consumer psychology at San Francisco's Golden Gate University, from "How to Hype-Proof Your Tween", Jeffrey Kluger, *Good Housekeeping*, accessed online on December 8 2010

[21] Kersting, Karen, Driving teen egos--and buying--through 'branding', *Monitor on Psychology*, June 6, 2004 p 60

them in the much quicker, purchasing transaction."[22]

32. Retailers like ANF have to address this paradox: the yearning for exploration, discovery and self expression, while at the same time, addressing tween and teens' desire to ensure that what they are trying and buying is tested and accepted by others.[23] At the same time, brands like Abercrombie have a specific opportunity measured in customer life stage years to market to their target segments, from the time they trade into the brand and till the time they leave the brand.

The Appeal and Importance of Brands to Tweens and Teens

33. Brand names have been documented as being important to kids, tweens and teens. Academic research has shown brand recognition to be evident in children from 7 years upward.[24] As the author Juliet B. Schor of the book *Born to Buy* on marketing to kids stated: "These days when kids ask, they ask for particular brands" A 2001

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[22] Underhill, Paco, Why We Buy: The Science of Shopping, New York, NY, Simon & Schuster, 1999 p. 152

[23] Joachimsthaler, Erich, John Lastovicka, Optimal Stimulation Level—Exploratory Behavior Models, *The Journal of Consumer Research*, Vol. 11, No. 3 December 1984

[24] Boden, Pole, Pilcher and Edwards, "New Consumers? The Social and Cultural Significance of Children's Fashion Consumption" working paper, Sept 2004, Department of Sociology, University of Leicester, from the *ESRC/AHRB Cultures of Consumption?* Working Paper Series

Nickelodeon study found that the average ten year old has memorized 300 to 400 brands. Among eight to fourteen year olds, 92 percent of requests are brand specific, and 89 percent of kids agree that "when I find a brand I like, I tend to stick with it."[25] A 2000 Griffin Bacal study found that nearly two-thirds of mothers thought their children were brand aware by age three, and one-third said it happened at age two. Even kids have clear preferences, they know which brands are cool, they covet them, and they pay attention to the ads for them. Today's tweens are the most brand-conscious generation in history.[26]

34. Academic research has shown that clothing provides an important role in identity creation, and consumers often decide whether to accept or reject products and brands on the basis of symbolic (as opposed to functional) attributes.[27] Because clothing is so readily apparent to others, accepted brand names are especially important in the apparel category—it represents a "badge" category, where clothing expresses something about the status of their users/wearers. Even starting

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[25] Juliet B. Schor, *Born to Buy*, Scribner, New York, NY, 2004.

[26] Juliet B. Schor, *Born to Buy*, Scribner, New York, NY, 2004, p. 25

[27] Banister and Hogg, "Symbolic Consumption: The Interplay Between Distinction, Distastes and Degrees of Rejection," citing Belk et al, 1982; Belk et al, 1984; Elliott, 1994; Freitas et al, 1997; Holman, 1981. Accessed at http://s1.e-monsite.com/2009/10/01/19638305roux-eacr-2005-goteborg-pdf.pdf

from childhood, academic research has shown that fashion consumption plays a key role in childhood projection of self, creativity, and identity development.[28] According to empirical research, teens are attracted to the prestige they believe brand- name clothing provides.[29] A 2007 survey of more than 2,000 13- to 17-year-olds found that teens have 145 conversations about brands per week.[30] A brand name can hold important associations in the minds of teens: "They [teens] believe in a brand name's power to confer status, cool, charisma, knowledge. They construct their identities by the shopping choices they make."[31]

35. For teens, there is a very narrow set of brands that they consider acceptable. They can be very fickle and discerning, and they frequently differentiate among brands by the relationships they have with a brand and the status it can provide them. The complexity of the teen definition of

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[28] Boden, Pole, Pilcher and Edwards, New Consumers? The Social and Cultural Significance of Children's Fashion Consumption" working paper, Sept 2004

[29] Kersting, Karen, Driving teen egos--and buying--through 'branding', Monitor on Psychology, p 60. *Adolescence Journal* (Vol. 33, No. 131) by economist Linda Simpson, PhD, of Eastern Illinois University

[30] Corcoran, Monica, These Days, Some Teens Covet Expensive Brand Names in Purses, Accessories, *Los Angeles Times*, September 25, 2007

[31] Underhill, Paco, Why We Buy: The Science of Shopping, New York, NY, Simon & Schuster, pp 151-152

what's cool often begins with their peer group: 50% of teens take fashion cues from their friends and 32% say other people at school (non friends) influence their fashion decisions. In addition, teens admit that they look to retailers for fashion ideas and that these stores influence their style.[32] Among teens, apparel brands have been ranked as among the coolest brands.[33] Simultaneously, apparel brands rank the lowest in terms of brand loyalty. This is due to the fluctuation of popularity of "in" brands, current styles and colors. This summarizes the paradox and difficult nature of teen apparel retailing—brands like Abercrombie must walk this fine line between ensuring that their bands are "cool" while ensuring that they do not fluctuate from "in" one moment and "out" the next.[34] One of the greatest challenges for brands like Abercrombie is maintaining long-term relevance for a restless tween/teen public. Against this context, it is all the more important for brands like Abercrombie to gain a deep understanding of their target's motivations and drivers, and proactively manage the brand by strategizing carefully, and executing flawlessly.

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[32] Zollo, Peter, *Getting Wiser to Teens: More insights into marketing to teenagers*, New Strategist Publications, Ithaca, NY, p 120-121

[33] Ibid, p 302-305

[34] Ibid, p 325-327

The Importance of Authenticity to Teens

36. As described, peer approval and *accepted* brand names are critical factors in getting into teens' consideration sets. In addition to these, authenticity is another hugely important factor with teens. Research on teen psychology has shown over and again that teens value honesty and authenticity; they tend to be naturally more skeptical of things that could be viewed as 'fake' or inauthentic. Studies have shown that teens can easily recognize when something is artificial, and are therefore looking for a quality of realness in the people and companies they associate with.[35]

37. Authenticity is important particularly in today's consumer environment that brands find themselves. Trust in brands has dropped from 52% to 25% between 1997 and 2007 and there is a enormous scrutiny by young consumers that brands tie back to some empirical reality.[36] Meaning can be created as has been shown by Ralph Lauren, Abercrombie and Nike but it needs to be authentic, honest, and clear in order to be considered by teens. A study on teens discovered that one of the most important things teens want from companies is that advertising be

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[35] Zollo, Peter, Getting Wiser to Teens: More insights into marketing to teenagers, New Strategist Publications, Ithaca, NY, 2004, pp 396,404-405

[36] John Gerzema and Ed Lebar, *The Brand Bubble*, Jossey-Bass, San Francisco, CA 2008; Rob Walker, *Buying In*, Random House, New York, 2008.

honest.[37] They are skeptical of brand promises that are unrealistic or less than credible. Teens are more sophisticated than ever, especially to branding and marketing, and not only can spot an artificial brand or claim; they in fact actively look for them.[38] Because teens are so critical of the authenticity of brands, brands like abercrombie need to execute their positionings perfectly and consistently in order to be accepted.

The Importance of Brand Experiences and Non-Traditional Marketing to Tweens and Teens

38. As written in Part IV of my book *Brand Leadership* and Chapter 8 of my book *Hidden in Plain Sight*, I discuss the importance of building a brand beyond traditional advertising and creating memorable experiences with consumers, because customers who share an emotional relationship with a brand will influence others and provide a strong and loyal sales base.[39] Building the brand without traditional media (e.g. TV, print) advertising is essential in tween and teen fashion retailing.[40] Tweens and teens are inundated with

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[37] Ibid, p 402

[38] Ibid, pp 402-405

[39] Aaker, David and Erich Joachimsthaler, Brand Leadership, The Free Press, 2000, Part IV, Joachimsthaler, Erich, Hidden in Plain Sight, Harvard Business School Press, Boston, MA, 2007 Chapter 8

[40] Aaker, David A., and Erich Joachimsthaler, Building Brands without Mass Media, *Harvard Business Review*, January-

media advertisements at a young age—the average teen has taken in some 140,000 messages by age 12.[41] In addition to teens being extremely skeptical and critical of marketing messages, research shows that as traditional advertising has become such a large part of their everyday lives, teens frequently tune messages out. Traditional television advertising fades into the backdrop as teens are passively involved with it, often ignoring messages right away.[42] Therefore, in order for brands to get their messages through to teenagers, they need to employ means *other* than traditional advertising—means that include being where the tweens and teens are, such as online websites and communities, and for older teens, at malls where they congregate on weekends and/or after school.[43]

39. To engage teens in particular, brands should not overload them with advertisements but rather, let fans and word of mouth do its marketing. Teenagers are "the most social of social creatures" and value friends' opinions above any traditional advertising.[44] Multi-sensory experiences play a key role in creating a brand experience, especially

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February 1997, Joachimsthaler, Erich Hidden in Plain Sight, Harvard Business School Press, Boston, MA, 2007 p. 145

[41] Zollo, Peter, p 378

[42] Ibid, p 379

[43] Ibid, pp 379-414

[44] Goodstein, Anastasia, Teen Marketing: Apple's the Master, *Businessweek*, August 16, 2007

when other youth-oriented lifestyle brands like American Eagle Outfitters, Aeropostale, or Roxy (and their related tween/kids extensions: 77Kids, P.S. from Aeropostale, and Roxy Kids, respectively), are attempting to communicate similar brand benefits to Abercrombie, so it is especially important that the Abercrombie brand engages the tweens and teens consistently through all their senses in order to gain a competitive advantage.[45]

IV. ANF's Proactive Management of Its Brands Identities and Customer Experience

40. Strong brands do not just happen by fiat. They need to be planned, developed, nurtured and managed through proactive and systematic management practices. In my book co-written with David Aaker, I covered the major components of a good and proactive system to manage brands.[46] In my work as a consultant, I have advised many leading companies in the fashion, retailing and consumer products sectors, and it is standard practice for these companies to manage and protect their brands through institutionalized and repeatable brand management systems, structures and practices.

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[45] Passalacqua, Jessi and Deon Riley, Employee Interviews, April 23, 2009

[46] Aaker, David, and Erich Joachimsthaler, *The Lure of Global Branding*, Harvard Business Review, November-December 1999, Aaker. David and Erich Joachimsthaler, Brand Leadership (The Free Press, 2000), Ch. 1

41. The most successful retail brands have highly differentiated and consumer-relevant brand propositions with clear brand identities and compelling brand experiences, and they have uncompromising standards on how to achieve this. In order to deliver brand promises to consumers that are largely intangible and consist of feelings and emotions, astute and systematic management practices are necessary. Inconsistent or haphazard management practices will result in a failure to deliver on the promises implied by a brand, leading to lowered brand equity in consumers' minds, and decreased brand ability to succeed in the marketplace.

42. Brands play a central and hugely important role in ANF's business model, and an integral part of ANF's overall business strategy. This strategy involves the creation of a highly distinct brand identity that appeals to its target segments, supported by exceptional in-store experiences that establish strong emotional connections with its customers.[47] I have analyzed ANF's procedures and activities used to manage their brands, and I will demonstrate how these have been the primary reason for the success of ANF in the highly competitive teen apparel market. My analysis is described in the following five sections:

(a) ANF's Brand Architecture

(b) The Abercrombie Brand Identity

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[47] Abercrombie & Fitch Annual Report, 2007, p 13

(c) The Abercrombie In-Store Brand Experience

(d) ANF's Brand Management Structures and Processes

(e) The Integral Role of Abercrombie's In-Store Employees

(a) ANF's Brand Architecture

43. An important component of a system of managing a brand is the *brand architecture*. The term 'brand architecture' is used to describe the organizing structure for a portfolio of brands and products. A brand architecture clarifies and specifies the various roles and relationships among a family of brands so that they can function together as a unit to create synergy, clarity and leverage.[48] There are several dimensions of brand architecture which I have extensively described in my books *Brand Leadership*,[49] *Hidden in Plain Sight*[50] and my article "The Brand Relationship Spectrum" that was published in the *California Management Review*.[51]

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[48] David A. Aaker, *Building Strong Brands*, Free Press: New York, 1996, pp. 241; David. A. Aaker and Erich Joachimsthaler, *Brand Leadership*, Free Press: New York, 2000.

[49] David. A. Aaker and Erich Joachimsthaler, *Brand Leadership*, Free Press: New York, 2000, p 136-138

[50] Joachimsthaler, Erich, *Hidden in Plain Sight*, Harvard Business School Press, 2007

[51] "The Brand Relationship Spectrum: The Key to the Brand Architecture Challenge" (co-written with David Aaker) (*California Management Review* 2000)

44. ANF has four different apparel and lifestyle brands, each with their own unique brand positioning and brand identity. While each of these four brands possesses its own unique "heritage and handwriting," they all share common elements and characteristics as a cohesive portfolio —"casual, classic, confidence, intelligence, privilege and a sense of humor."[52] These brands have been carefully planned to be able to stand independently on their own, while simultaneously working well together as a group to complement the other brands in the portfolio. Together, they have the ability to deliver unique functional, emotional and self-expressive benefits teens and young adults through each major stage and turning point of their lives, from the time they are in elementary school through high school, college, and early career adulthood. The ANF brand architecture can be described in the following table:

Brand:	**Abercrombie Kids**	**Hollister**	**Abercrombie & Fitch**
Primary Brand Target:	Pre-teens and young teens in middle school	Teens in high school	College Kids
Brand Identity and	Vintage, prep-school	Casual wear based on effortlessly cool	Preppy yet rugged casual wear inspired by

[52] AFI Annual Report 2007, p. 6

Product Offering:	style casual-wear	Southern California surf lifestyle	the Northeast and Ivy League heritage

45. As can be seen, ANF has developed different brands that have different product offerings, brand identities, experiences and sensory brand cues that are based on what are aspirational and appealing for their particular target groups, while fitting cohesively together with its sibling brands. The Abercrombie & Fitch Career Opportunities Booklet describes the ANF brands as follows:

> "Trends transcend age and our brands are a testament to this philosophy. We are experts in cool, All-American, casual wear and offer these fashions to our target consumers. As our customers grow up, the A&F brands grow with them. Our goal is to market the most aspirational lifestyle to each of our targeted age groups."[53]

By managing a portfolio of brands and retail stores that cater to distinct segments, ANF is able to capture consumers as they move along their life journey. This practice of marketing to consumers through their life stages, and keeping them "in the tent" as they grow older or move upward, is common practice. For example, adult-targeted stores generally do not mind having teenage browsers because they want to build

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[53] Abercrombie & Fitch Inc. Career Opportunities Booklet

loyalty in the early years. If a retailer can make an impact on them at that stage, it's likely to pay off in later life.[54]

(b) The Abercrombie Brand Identity

46. One of the most important aspects for proactively managing a brand is to create and maintain a clear and compelling *brand identity*. A brand identity refers to what a brand stands for and aspires to create in consumers' minds; it defines the set of associations or values that should be mentally linked to the name in consumers' minds.[55] It also defines the vision for a brand from the perspective of the strategist and therefore defines how a brand is created and maintained over time. Over the last 15 years, the development of a brand identity system as a tool has been one of the most important developments in the field of branding. Some refer to it as the brand DNA, the brand print, the brand intent, the brand story or the brand foundation. In *Brand Leadership*, David Aaker and I used the term "Brand Identity System" because to be truly successful in the marketplace, a brand must have a coherent identity much like a person has an identity. Also, I use the word "system" because defining a brand

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[54] Quote from Retailing Reality, Jie Zhang, Assistant Professor of marketing at the University of Maryland's Robert H. Smith School of Business, in Arantani, Lori, "Drool Now, Spend Later", *The Washington Post*, Monday, June 4, 2007; Page D05

[55] Aaker, David, and Erich Joachimsthaler, Brand Leadership, The Free Press, New York, NY 2000 Ch. 1.

requires a system of concepts and elements that fit together in a coherent and logical way.

47. A brand's identity can be composed of many different dimensions—such as products, the brand personality, symbols, organizational attributes, and experiences—that together, add depth, texture and detail to a brand identity. These elements together become the foundation for the value proposition to consumers which comprises functional, emotional, and self-expressive benefits.

48. ANF has created for Abercrombie a strong, well-developed brand identity. As the "younger sibling" kids' extension of Abercrombie & Fitch, abercrombie's identity is built around American Northeast prep schools while older sibling Abercrombie & Fitch is the preppy All-American classic from New England Ivy League schools. The Abercrombie & Fitch brand is described on ANF's careers website and in ANF's Annual Report as follows:

> "Rooted in East Coast traditions and Ivy League heritage, Abercrombie & Fitch is the essence of privilege and casual luxury. The Adirondacks supply a clean and rugged inspiration to this youthful All-American lifestyle. A combination of classic and sexy creates a charged atmosphere that is confident and just a bit provocative. Idolized and respected, Abercrombie & Fitch is timeless and always cool."

The abercrombie brand identity is similar to Abercrombie & Fitch, just with a younger, more youthful slant:

> "The essence of privilege and prestigious East Coast prep schools, abercrombie directly follows in the footsteps of Abercrombie & Fitch. With a flirtatious and energetic attitude, abercrombie are popular, wholesome, and athletic. Rugged and casual with a vintage inspired style, abercrombie aspire to be like their older sibling, Abercrombie & Fitch. The perfect combinations of maturity and mischief, abercrombie are the signature of all-American cool."[56]

49. Overall, the brand identity of Abercrombie is conveyed consistently and extremely coherently across all external consumer touchpoints, as well as internal employee and staff communications that I have reviewed, from internal HR management documents to recruitment material. Abercrombie's product offering is highly aligned with, and overtly communicates, its New England preppy cool brand identity: rugged casual lifestyle clothing for men, women, girls and boys, tote bags, accessories and footwear like gloves and flip flops, and fragrances.[57] The Abercrombie and associated kids product offering reflects associations such as "stylish", "vintage", "casual",

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[56] http://www.abercrombie.com/anf/careers/brands.html, accessed on December 8, 2010

[57] http://www.abercrombie.com, December 8, 2010

"active", and "rugged" The offering includes core items that add up to a very recognizable and typical all-American casual Abercrombie "look"—comprising t-shirts, polo shirts, hoodies, sweaters jeans, plaid shirts, tank tops and flip flops that are always available from year to year.

50. The Abercrombie product offering is enhanced by a compelling brand *personality*, with attributes such as attractive, effortlessly cool, All-American, easy going, and casual style. The store employees or "models" that Abercrombie chooses to represent the brand in stores appear attractive, active, and outgoing, reflecting the brand identity and aspirational all-American cool. In the Abercrombie & Fitch Career Opportunities Book, the target abercrombie customer, or "abercrombie girl" is described as 12 years old (but wants to be 17), embodying attributes such as "all-american, aspirational, happy, fun, confident, leader, casual, pretty, classic, preppy, athletic, diverse, popular, privileged." Abercrombie (kids) boys are described as being "all-american, mischievous, daring, preppy, cool, classic, athletic, rugged, clean cut, diverse, popular and privileged."[58]

51. The fact is that the Abercrombie brand has leveraged and based its brand identity off a preexisting, recognized subculture—the New England prepster. As a subculture with its own set of recognized codes, cues, dress style, vocabulary

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[58] Abercrombie & Fitch Career Opportunities Book A&F000262

and language, habits and other attributes, the "prep" or "preppy" lifestyle has been described, celebrated and even satirized in media and books such as *The Official Preppy Handbook, The Ivy Look, True Prep: It's a Whole New Old World*, and the best- selling novel *Prep* by Curtis Sittenfeld.

52. For Abercrombie, being associated with the prep subculture is a way to build consumer affinity and loyalty. Through adopting and leveraging an existing subculture's cues and codes, the equities and positive associations of the subculture can be transferred and shared with the brand. This is what I have referred to in my work as an identity-driven branding strategy, and one that leverages pre-existing contextual and cultural codes that are already important and meaningful to consumers.[59] Being associated with and leveraging an existing subculture—be it hip hop, rock 'n' roll, Goth, SoCal surfer, Hipster, New England prep, or extreme sports, just to name a few—is an extremely powerful and authentic way to build a brand.

53. Another important element or concept of a strong brand identity is *symbols*. As I have noted in my writing before, symbols and visual elements provide a "glue" or structure to hold the various elements of the brand together into a coherent

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[59] Joachimsthaler, Erich, Hidden in Plain Sight, Harvard Business School Press, Boston, MA, 2007, Chapter 8: Connecting With and Engaging Customers

identity, making it easier to gain recognition or recall, and evoke particular thoughts, feelings and emotions with a brand.[60] In the case of Abercrombie, a large number of visual identity elements come together in a coherent and logical way to create the overall brand identity: the moose logo, the prominent "A&F" or "Abercrombie & Fitch" on clothing (and for the kids line, "abercrombie" and "a&f in lower case typeface), the vintage and casual/rumpled look of the way the clothing is styled, the black-and-white and vintage toned imagery, and the pictures of attractive models amidst outdoor backdrops featuring wood and grass. All these visual elements appear collectively on Abercrombie & Fitch and abercrombie's apparel, in- store imagery and other paraphernalia. Because the brand bears symbols and motifs that are evident on its apparel, they provide a vehicle by which pre-teens and teens can proclaim that their self image is "casual, American cool." All together, these visual images add up to a representation of an aspirational ideal: rugged casual New England prep-inspired lifestyle.

54. Overall, the Abercrombie brand identity is extremely well developed, with clear depth and texture from all its multiple components that collectively add up to a very coherent identity. These components include personality attributes,

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[60] Aaker, David, and Erich Joachimsthaler, Brand Leadership, The Free Press, New York, NY 2000, p. 54

symbols and visual elements, consumer emotional and self-expressive benefits, and the leveraging of the real-life prep subculture. It is obvious that all these various brand attributes have been carefully planned and thought through by ANF, as they are highly codified and consistent across everything that I have reviewed. Additionally, the brand is expressed and enhanced through a highly sensory retail experience as I describe below, with visual, verbal, aural and olfactory cues, symbols and codes that are executed extremely consistently in a highly disciplined fashion. As I will show, an employee's appearance and dress is one, albeit critical, component of this carefully-planned and highly disciplined holistic brand management effort.

(c) The Abercrombie & Fitch and abercrombie In-Store Brand Experience

55. It is a fundamental tenet of good brand management that a brand has to be communicated coherently and consistently across all consumer touch points (points of contact between a brand and consumers). Consumers experience brands in so many different ways in everyday life beyond the tangible product offering itself—through the brand's stores, websites and online presence, through the people who represent and sell the brand, the customer service department, articles about the brand in the media and popular press, and word of mouth. As such, everything communicates a brand to the consumer—both contact points that are controlled by the brand (e.g. brand

websites, stores, employees), as well as contact points that are *not* controlled by the brand (e.g. media articles written by reporters, friends, word of mouth opinions).[61] I wrote about this as far back as 1997 in my Harvard Business Review article "Building Brands without Mass Media."

56. I have in my book *Hidden in Plain Sight* described how in order to succeed with customers, brands need to manage all their various points of communication and interfaces with customers, to connect and engage with them by finding customers "where they are" and being part of their lives through the everyday experiences that consumers have with the brand. A brand can spend millions of dollars on advertising, and yet the brand's name can mean nothing to consumers. A brand is, instead, created out of everyday consumer contact and the experiences that customers have with it. Successful brands commit to constantly improving and safeguarding the integrity and associative value of everything that surrounds the brand in all phases of development: where it is conceived, where it is made, where it is seen, and where it is sold.[62] Brand owners must leverage every opportunity available to control and project the brand story.

57. Within the world of retailing, executives have an even larger responsibility to present the retail

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[61] Bedbury, Scott, A New Brand World, Penguin Books, New York, NY 2002, Chapter 5

[62] Ibid, p. 111

brand in the best possible light through the retail stores. This comprises a whole host of disparate consumer touchpoints—visual imagery, décor and displays in the store, apparel labels and hangs tags, even the shopping bags that consumers carry out of the store. In my book *Brand Leadership*, I describe how branded environments can provide a total functional and emotional experience, where the setting for the experience and the sensory cues all help to create and reinforce the brand identity and brand associations.[63] The shopping experience itself has become an advertising vehicle as it is an opportunity for the consumers to experience the brand first hand while making purchase decisions there and then.

58. Take the example of Nike. Through its flagship Niketown stores, Nike aimed to create positive brand associations and strong brand-consumer relationships. The primary purpose of Niketown was not profits per se, but rather, to create a powerful and complete "Nike experience" so that it would stimulate purchases of Nike products at *other* retail channels. Hence the experiential displays of past iconic Nike shoe models, *Sports Illustrated* magazine covers featuring athletes wearing Nike, actual half-court basketball floors, and video clips of athletes in Niketowns.[64]

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[63] Aaker, David and Erich Joachimsthaler, Brand Leadership, The Free Press, New York, NY, 2000, Chapter 9: Building Brands—Beyond Media Advertising

[64] Pine and Gilmore, pp 63

59. These various principles that I have described above are important for brands generally, and even more important in the teen market. Given teens' attitudes toward brands, all consumer touchpoints must be completely aligned and consistent with a brand's identity, in order for the brand to appear authentic to the discerning and critical teenager. For teen apparel retailers, the shopping environment provides a perfect, controllable environment to communicate the complete brand identity in a holistic and highly experiential way.

> Brands that are themselves retailers—Abercrombie & Fitch, American Eagle, Old Navy, Gap, and others—benefit from having total control of their retail environment. From the displays to the full realm of merchandise to the store aesthetic (layout, lighting, music, signage and sales clerks), these retail brands are able to craft the environment to complement, enhance, and convey their brand message and overriding identity.[65]

60. Since inception, ANF's primary business and marketing strategy has been to focus on building the brand through delivering a highly sensory retail experience to target customers with minimal advertising, creating peer acceptance and fostering word-of-mouth brand promotion within

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[65] Zollo, Peter, Getting Wiser to Teens: More insights into marketing to teenagers, New Strategist Publications, Ithaca, NY, 2004, p 333

each target segment. Various ANF's executives, and even its Annual Report, have confirmed the extreme importance of the retail store experience.

61. As part of its store-focused business strategy, ANF has developed standards for every aspect of the customer experience to ensure the brand's image is evident to consumers the minute the step into a store: through product presentation, marketing imagery, music and lighting, fragrance, and enthusiastic and energetic brand representatives, with continuous reinvestment in store refreshes and remodels.[66]

62. According to ANF executives, the goal of the shopping experience for ANF's brands is to be "the best retail experience that its customers have ever experienced." The ANF stores are supposed to transplant shoppers from a generic mall and bring them right into a Prep School hangout (abercrombie), a surf hangout with imagery of the Huntington Beach Pier (Hollister), or a private club (Abercrombie & Fitch).

63. I have visited Abercrombie & Fitch, abercrombie and Hollister stores. I have reviewed the materials and spoken to ANF executives mentioned in the front of my report. From what I have seen, every aspect of ANF brands' stores are highly consistent and deliberately executed to

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[66] Abercrombie & Fitch Annual Report, 2007, p. 6, abercrombie Employee Interviews, April 23 and May 4, 2009

evoke each brand's identity—from the music played and sold there, to the live TV feed of SoCal beaches in Hollister stores, the athletic and lifestyle props used in Abercrombie stores, and the related lifestyle magazines artfully displayed around the stores. According to ANF executives, even the in-store music varies from brand to brand, based on each brands identity. Abercrombie stores play pop music and Top 40 hits; Hollister stores play Garage and SoCal-styled music; Abercrombie & Fitch stores play dance music.[67] In addition, ANF fragrances are sprayed heavily throughout the store, so that consumers can smell it on the clothes they purchase and bring home—part of a deliberate strategy so that consumers remember their in- store experience after they have left the store and are enjoying their purchases at home.

64. The Abercrombie & Fitch store experience is widely recognized and acclaimed. From numerous data points ANF is a clear market leader in creating one of the best in-store retail experiences. In a *Journal of Marketing* article measuring successful brand experiences, the Abercrombie & Fitch stores ranked among the best brands, among such renowned experiential brands as W Hotels, the Apple Store, and Star-

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[67] Interviews with Sunny Traub and Brandon Tonniges, May 4, 2009

bucks.[68] The same experience is carried over to the abercrombie stores albeit with minor differences. Even on Wikipedia—the publicly-editable encyclopedia website—the reference for abercrombie states:

> "Abercrombie stores are designed to give off a "classic cool" effect. They are designed as "canoe stores," displaying a similar floor layout as Abercrombie & Fitch's (the retail space is divided into multiple rooms). However, the kids prototype does bear differences. It has no louvers to cover the windows, has brighter lighting, is smaller in retail space, blasts electronic dance music and pop music from young artists, and displays marketing pictures with young models resembling those at A&F. The signature fragrance, "Phelps", is sprayed store-wide."[69]

65. ANF's expertise and great success in creating the ultimate brand experience across all their portfolio brand stores has even been acknowledge by a *competitor* Quiksilver when describing what ANF did with Hollister:

> "They get an A in the romance," says Quiksilver's Executive Vice President of Strategic Brand Development Tom Holbrook, who re-

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[68] Brakus, Josko J., Bernd H. Schmitt, and Lia Zarantonello, Brand Experience: What is it? How is it Measured? Does it Affect Loyalty?, *Journal of Marketing* p 5-6, May 1, 2009

[69] http://en.wikipedia.org/wiki/Abercrombie_kids

cently returned from a retail tour in the Midwest. "I heard people outside the store asking if it was a restaurant. It doesn't look like a typical store, and when you walk into a store everything is controlled—the smell, the lighting, the look of the kids that are working there. They've packaged the environment better than anybody, and I think that's a lesson that a lot of people have learned ever since they launched."[70]

(d) ANF Brand Management Structure and Processes

66. In this sub-section, I describe how various organizational structures and management processes, including the Abercrombie Look Policy, are absolutely critical in ensuring that Abercrombie's carefully-crafted brand identity and sensory in- store brand experience is maintained consistently across its retail stores.

67. In my book *Brand Leadership* as well as research that led to the book, I describe the various organizational structures that create responsibilities and accountabilities for managing the brand.[71] Having proper processes is extremely important in ANF's competitive retail market. At ANF and abercrombie, brand management

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[70] Hunter, Josh, *How* Hollister Co. Stole Surf: Eight Years After Abercrombie & Fitch Invaded The Surf Market, What Can be Done To Defend Against Them?, TransworldBusiness, August 7, 2008.

[71] David A. Aaker and Erich Joachimsthaler, The Lure of Global Branding, *Harvard Business Review*, November/December 1999.

efforts are cooperatively led by the Design, Stores, Merchandising, and Human Resources teams. From my executive interviews, I understand that the ANF brand management system is standardized, managed and conveyed internally through a number of different guidelines, programs and policies. These include, for example: weekly manager meetings, the Human Resources Daily Program, Associate Handbook, Appearance/Look Policy, Employee Training Materials, Manager-in-Training Program, "Today at Abercrombie" newsletter, and Store Floorset documents, just to name a few.[72] Collectively, these specify how ANF brands should be represented; they facilitate and support the retail store experience and brand portrayal in a visually and experientially consistent and positive manner.

68. Because retail plays an oversized role in ANF's business strategy and influencing consumers' perceptions and purchase decisions, there is an extremely well-developed system of managing the abercrombie in-store retail experience. ANF meticulously controls and ensures that each and every in-store experience is consistent and standardized, right down to the brightness of the lighting, the decibel level of the music played, the way merchandise is displayed, how employees look and behave, even the taglines

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[72] Passalacqua, Jessi and Deon Riley, Employee Interviews, April 23, 2009

that employees use to greet customers. The desired store experience is created at corporate headquarters by the company's Brand Senses team, and then rolled out nationwide. All store experiences are managed and continually evaluated based on the ANF "six senses"—sight, sound, smell, energy, touch, and taste:

> We [Abercrombie & Fitch Stores, Inc.] have six senses; Sight, Sound, Smell, Touch, Taste and Energy. From the first moment a customer enters the store they are transported into an atmosphere that looks and feels completely authentic to each brand. The up-beat sound of the latest music lends to a lively mood while our signature fragrance fills the air. From our incredibly soft fabrics to our delicious lip glosses—everything combines to create a unique one-of-a-kind energy.[73]

69. To make sure all stores are consistent and aligned with the desired brand experience, ANF issues a "Program" every day that is generated by headquarters and disseminated to all ANF store managers across the country. The Program details any updates, reminders, or policies that need to be implemented or enhanced at stores that particular day. This could include information on a change of store music, a new customer greeting tagline, or a reminder about

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[73] Abercrombie & Fitch Stores Inc. Career Opportunities Booklet, p 18

the Look Policy.[74] Details of each day's Program are disseminated by store managers to all store employees.[75] Store managers are instructed to conduct regular, hourly audits based on the ANF "six senses." The "Floor Supervisor Survival Guide: Store Experience Snapshot" lists criteria as follows:[76]

> **Energy:** Beautiful and handsome faces that are engaging, smiling, energetic, happy people
>
> **Sight:** Floorset, details, lighting, marketing, forms, rightsizing
>
> **Smell:** Iconic scent spritzed every 1/3 hour, 3 pumps, and 6" from the merchandise, forms and rugs
>
> **Sound:** Iconic music must be set on *high* to create a fun, optimistic environment
>
> **Touch:** Our standard is to have the softest feeling merchandise

70. Also, ANF has put in place a *Secret Shopper* brand and retail experience evaluation program in which shopping 'spies' are sent out into stores twice a month to assess the stores' compliance with and performance in creating the desired brand experience. Stores are reviewed and measured against specific metrics, to assess if

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[74] Passalacqua, Jessi and Deon Riley, Employee Interviews, April 23, 2009

[75] Ibid, April 23, 2009

[76] "Floor Supervisor Survival Guide", A&F000762

they meet standards and are complying with all guidelines (e.g. employees using the standard tagline issued, appearing on-brand, having the music on at the right level, etc.). Results are delivered weekly to all Store Directors and Regional Managers. The managers whose stores perform in the bottom 10% of the assessment are required to participate on a conference call with the corporate office and work on improving their overall evaluation.[77]

71. On the basis of my analyses, I conclude that ANF has put in place critical key processes, systems, policies and guidelines that are absolutely necessary to execute the abercrombie brand experience optimally and consistently across all its stores. More than that, these processes and policies are absolutely critical for abercrombie to convey the right associations and compete effectively for the attention of its tween target audience.

(e) The Integral Role of ANF's and Abercrombie Store Employees

72. In this section, I describe the role and particular importance of ANF's store employees in representing and conveying the ANF brands (including abercrombie), and enhancing the in-store experience for ANF's customers.

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[77] Information on the Secret Shopper program comes from the interview with Jessi Passalacqua on April 23, 2009

73. In the retail environment, many purchasing decisions are made, or can be heavily influenced, while consumers are on the floor of the store itself. Shoppers are susceptible to impressions and information they acquire while in stores. In fact, shopping research has shown that the longer a shopper remains in a store, the more he or she is likely to buy. And, the amount of time a shopper spends in a store depends on how comfortable and enjoyable the experience is.[78]

74. Retail shopping, especially for teens, comprises much more than the actual goal of buying something. For them, shopping a means of interacting and socializing with their friends, and forming relationship bonds through hanging out and browsing through store racks. While teens are in a store with their friends, it is vital for the retailer to make a strong impact on them, to create that "holy grail" of brand and peer acceptance among teens, as well as differentiating itself from mall neighbors as well as other category competitors. Retailers do this by creating a multi-sensory experience that is attractive to teens, through the store's look and feel, its employees, and its overall atmosphere.

75. In any retail setting, *employees* are a crucial component in communicating the brand experience because they are the personification of the brand. In fact, "employees are the conduit

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[78] Underhill, Paco, Underhill, Paco, Why We Buy: The Science of Shopping, New York, NY, Simon & Schuster, 1999, p. 33

through which all careful product design, manufacturing, packaging and processes are finally delivered to customers; they are the means to bring the brand alive."[79] Because the employees in the retail environment are the most obvious personal contact consumers have with the brand, everything they do, say, and wear communicates the brand, whether it is through appearance or behavior. Thus, the look and behavior of the retail employees both need to be tightly controlled so as to ensure they accurately represent and embody the brand.

76. In particular, clothes and attire send the most visible cues to customers to help them identify messages consistent with a brand and its desired experience. It is widespread practice for retailers to lay down a dress code or look policy for their employees so that they look aligned with the brand and product offering. For example, Banana Republic employees express its "classic casual chic" brand positioning and product offering through their smart casual chic dress appearance. On the other end of the spectrum, TopShop's style advisors express the eclectic, cutting edge TopShop brand image through their 'exuberant sense of personal style."[80] Similarly, Nordstrom's sales people dress according to the

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[79] Clifton and Simmons, Brands and Branding: The Economist Series, Chapter 6: Brand Experience, by Shaun Smith, 2004

[80] Wilson, Eric, "Trust Me. You'll Look Cool In It." *New York Times* Fashion & Style Section, April 9, 2009

style of the department that they represent—suit salesmen wear classic business formalwear, while salesmen in the young men's fashions are more casually dressed in jeans.

77. Because the ANF brands' identities each embody a specific concept (e.g. Abercrombie's New England preppy cool or Hollister's Southern California beach/surf lifestyle) with a specific set of associations and brand cues, it is even more important for employees to look the part. Store employees are an important way for consumers to experience the look, attitude, and personality of the brand.

78. Since tween and teen purchases are heavily influenced by peers whom they admire and think are cool, it is important for retail store employees to act as those aspirational cool peers. According to the Human Resource department at ANF. there is a reason why in-store employees are not called sales associates and instead, called "Models." They are supposed to embody the ANF brand values of All-American optimism, with active, fun, outgoing and engaging personalities, while also being driven and successful.[81] Their role in stores is to greet customers, make them feel welcome and comfortable, model the ANF brand's style of clothing and its particular "look", act as aspirational role models, and engender positive feelings toward the brand.

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[81] Passalacqua, Jessi and Deon Riley, Employee Interviews, April 23, 2009

They are Brand Ambassadors in the truest sense —a verbal, visual and human experience of the Abercrombie brand and its embodiment of rugged casual all-American prep. Importantly, these Models do not have individual sales quotas, further underscoring the fact that the Model's primary role is to personify the abercrombie brand rather than pushing sales and earning sales commissions. This stands in stark contrast to most other retail brands' store employees who work based on sales commission.

79. That Models are a physical representation of the brand is evident to any aspiring applicant and indeed, to the public at large. On the publicly-accessible Abercrombie & Fitch Careers website, it is stated very evidently:[82]

> "Models protect and project the image of the brand through personal style, providing customer service and maintaining presentation standards.
>
> **WHAT YOU NEED TO BRING TO THE JOB:**
>
> Sophistication, aspiration, sense of style, diversity awareness, integrity, applied learning, outgoing personality and communication skills.

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[82] http://www.abercrombie.com/anf/careers/model.html, accessed on December 8, 2010

SKILLS YOU WILL DEVELOP ON THE JOB:

Passion for the brand, multi-tasking, adaptability/flexibility, attention to detail, product knowledge and customer focus."

80. As physical brand ambassadors in the retail environment, Abercrombie's store employees/Models have an additional important role in framing or anchoring the brand for consumers. Framing occurs when a person or object exemplifies specific brand cues and creates either a positive or negative frame against which all other cues are processed. Anchoring is a cognitive bias that causes consumers to rely more heavily on a particular single dominant cue as an "anchor." Consumers will arrive at an initial judgment (e.g. a judgment of an in-store employee who greets you), and then make adjustments of their first impressions based on additional information.[83] Given teens' psychological disposition to look to specific role models and cues, the role of the employee is all the more important so that Abercrombie can ensure that their customers have a strong and favorable impression of the brand.[84]

81. For all these reasons, in order to execute, manage, and standardize the brand experience for its thousands of retail employees, the Abercrombie

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[83] Kotler, Philip, and Kevin Lane Keller, Marketing Management, 13th Edition, PHI, pG1

[84] Ibid, p. 176

Appearance/Look Policy is detailed and specific, covering all aspects of employees' appearance and behavior. The Abercrombie & Fitch Store Associate Handbook states:

> When people think of Abercrombie & Fitch, they think of lifestyle clothing with great attitude, a comfortable fit, and the best quality. As an associate of Abercrombie & Fitch, you should always strive to project a professional image that is consistent with our reputation as the best in the fashion industry. We realize that your manner of dress and grooming habits are highly personal and subject to your own tastes and preferences. We wish to respect your individuality and still maintain a consistent level of dress and grooming that represents what people expect from Abercrombie & Fitch.[85]

82. In the Appearance/Look Policy, ANF makes it clear the objective of its retail employees in reinforcing the brand's identity, representing its natural, classic all-American style. The Look Policy clearly states that clothing and footwear style should be similar to the Abercrombie & Fitch brand, and that "**All clothing and footwear**

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[85] Abercrombie & Fitch Appearance/Look Policy, Associate Handbook, p 29-30

choices should reflect what a customer would see when they think about the Abercrombie brand."[86]

83. To further ensure brand alignment, the Look Policy Guidelines are also highly prescriptive across many dimensions, covering do's and don'ts for hairstyles, makeup, fingernails, facial hair, clothing and footwear, jewelry, tattoos and caps. Men are not allowed to wear earrings. Women are not allowed to wear more than two earrings on each ear. Even though A&F has a gym clothing line, no gym shorts are allowed as clothing worn at work should not be too informal. Likewise, even though A&F sells caps, they are considered too informal for the image ANF wants to project, and are not allowed to be worn on the sales floor.[87] My understanding from my conversation with ANF's Director of Stores, Midwest is that this policy extends beyond caps to apply to all headgear.

84. In addition, there is also the weekly "HR 411" which reminds all in-store managers about HR policies, including the essential aspects of the brand in order to create a consistent and standard Abercrombie experience. This includes information on the Look Policy, Style Consistency, and hiring tips. On top of this, the weekly "Today at Abercrombie" newsletter is issued to keep

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[86] Abercrombie & Fitch Appearance/Look Policy, Associate Handbook, p 29 and 30, A&F000053-54

[87] Abercrombie & Fitch Appearance/Look Policy, Associate Handbook, p 29 and 30, A&F000053-54

the Models updated on the specifics of their role as a brand representative. For example, they are given the newest tagline on what specifically each employee should say when greeting a customer, what product they are talking about that week, and how to style their clothes with corresponding instructional photos.[88]

85. The importance of store employees for Abercrombie cannot be overstated. It is precisely because of their critical importance that detailed guidelines and policies on employees' appearance and behavior are vital. Even the *Journal of Integrated Communications* has taken note of, and commended this: "Abercrombie and Fitch highly regulate the appearance of their stores, advertising and even the physical appearance of store employees every customer who enters an Abercrombie & Fitch store can feel the Abercrombie & Fitch style from the store layout to the cashier."[89]

The Negative Impact of a Store Employee Wearing Inappropriate Attire

86. In this section, I will present my analysis of the negative effect that a violation of the Look Poli-

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[88] Multiple *Today at Abercrombie and Today at abercrombie* newsletters, A&F000785-839

[89] Jung, Kacie Lynne and Matthew Merlin, Lifestyle Branding: As More Companies Embrace it, Consumer Opposition Grows, *Journal of Integrated Communications*, 2002-2003, p 41-42

cy, such as wearing of inappropriate attire by a store employee, has on the Abercrombie brand.

87. As I have described, the Abercrombie brand identity is communicated powerfully and holistically through its store experience. Given that they convey the New England prep school/Ivy League "preppy cool" lifestyle and subculture, the brands must be conveyed in a multi-dimensional *and* highly consistent manner. In order to be credible, ANF needs to ensure a flawless, 360 degree execution of the brand. The brand must "walk the walk" and not just "talk the talk"

88. Studies have shown that one of the most important factors that affect a brand's associations is the consistency with which brand information is presented to consumers.[90] This consistency is critical to maintaining the strength and favorability of brand associations. If consumers receive mixed messaging from a brand, e.g., conflicting portrayals of a brand's positioning, they will become confused as to the true essence and value of that brand. Mixed messaging regarding a brand's positioning will impact consumer confidence when evaluating the brand, which

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[90] Kevin L. Keller, Strategic Brand Management: Building, Measuring, and Managing Brand Equity (Prentice Hall, 2007).

may lead consumers to abandon the brand altogether.[91]

89. The Abercrombie & Fitch and abercrombie brand experience comprises a holistic, 'gestalt' of different components—from the preppy and vintage look and feel of the clothes displayed, the black-and-white photography and stylized displays with use of props such as athletic equipment (hockey sticks, boxing gloves, soccer balls) and moosehead taxidermy,[92] the type of music played, to the appearance and behavior of its store employees/Models. Each component of the entire brand experience is important and critical, and works together as a carefully managed 'family' of components that collectively drive toward conveying the New England prep school/Ivy League lifestyle in the most coherent and authentic way possible. Conveying the brand in a cohesive manner aids the encoding of new information into memory and its retrieval and strengthens the development of the brand image in consumers' minds.[93] This is why brands work so hard to be consistent and "authentic" to teens. Take for example, the Air-

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[91] Lefa Teng and Michael Laroche, Building and Testing Models of Consumer Price Intention in Competitive and Multicultural Environments, *Journal of Business Research*, March 2007.

[92] abercrombie floorset instructions, Spring Break 2008, A&F001080

[93] John R. Anderson, *The Architecture of Cognition*, Cambridge, MA: Harvard University Press, 1983.

walk brand of youth-oriented board shoes. It has worked tirelessly to appear authentic to teens by sponsoring and associating itself the best athletes in its category, such as superstar skateboarder Tony Hawk and Winter X Games snowboarding gold medalist Lindsey Jacobellis.

90. Against this scenario, even an aberration of a single component, particularly one that is as obvious and visible as an employee's physical appearance through his/her attire, can distort the desired brand effect and consumer perceptions. This aberration causes a breakdown in the synergy of the in-store experience components. It weakens the associations of the other components and brand cues, disrupting the carefully thought-through effect that ANF has worked hard to achieve. According to the psychological decision making bias, the availability heuristic, consumers base their predications of items or brands on the quickness and ease with which a particular example of an outcome comes to mind. A standout, off-brand experience that comes to mind quickly can overestimate the likelihood of its happening again and again in the mind of the consumer; it may lead a consumer to inflate the likelihood of a future negative, off-brand experience occurring.[94]

91. An inconsistent or negative in-store brand experience can cause adverse damage to a brand and

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[94] Kotler, Philip, and Kevin Lane Keller, Marketing Management, 13th Edition, PHI, p 175

its sales. As data indicates, there is a direct relationship between purchase rates and the satisfaction rating of a retailer, indicating that negative experiences are a key cause of lost sales—10% to 30% plus future lost sales due to shoppers switching retailers.[95] Negative experiences could be anything ranging from an encounter with an unfriendly store employee, to out-of-stock merchandise. In fact, data also suggests that these negative experiences impact not only the customer who experienced it, but also the customers circle of friends and family with whom they are likely to spread their negative experiences.[96]

92. A store employee's incorrect portrayal of the brand—be it through his/her attitude or the wearing of an inappropriate clothing style, footwear, headgear or jewelry not representative of the brand—can have a negative impact on the brand because he/she is viewed by thousands of people in a given week. Take for example, the Woodland Hills Mall abercrombie store in Tulsa, Oklahoma—on any given week, a Model could incorrectly portray the brand to hundreds of in-store customers.[97] These customers could go on

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[95] Lucas, James, The Critical Shopping Experience; The Retail Tragedy: Frankel Examines Why Shoppers Switch, *Journal of Marketing Management*, Volume 8, No 1, Spring 1999, p. 60

[96] Ibid, p. 60

[97] Store data for the Woodland Hills Mall store in Tulsa, OK from 2008: 604 average transactions per week.

to spread the message to their thousands of friends and the negative impact on the brand is compounded.

93. In addition to the potential damage in customer perceptions, any violation of Abercrombie & Fitch Look Policy may cause confusion among other ANF employees, resulting in a breakdown of a highly-controlled brand management system. In the case of *Cloutier v. Costco Wholesale Corp.* where an employee violated Costco's look policy by wearing facial jewelry, it was determined that Costco was within its rights to establish a "no facial jewelry" policy because "it would result in the company's losing ability to control how it projects its image to the public and, further that 'the company had a legitimate interest in maintaining a professional image."[98] At abercrombie, one exemption from the Look Policy could result in a breakdown in ANF's control over the in-store brand experience, one that is critically important to maintaining the legitimacy of the brand's identity and image.

94. The abercrombie brand identity is founded upon its sibling Abercrombie & Fitch brand, which has been built as the epitome of an aspirational, all-American cool brand for youth and teens. This is reflected not only in ANF's internal objectives

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[98] King, George G., Jeffrey D. Winchester, You (Don't) Look Marvelous: Considerations for Employers Regulating Employee Appearance, Cornell Hotel and Restaurant Administration Quarterly, November 2006, p. 365

and its highly controlled brand management practices, but also reflected in actual teen perceptions of the brand-Abercrombie & Fitch ranks amongst the top teen preferred clothing brands.[99]

95. ANF has defined a set of parameters and guidelines for what it believes to represent all-American New England prep school cool and what it takes to portray this aspirational lifestyle—through the specific "looks" portrayed in its brand imagery and websites. Clothing, footwear, headgear and overall appearances that do not fit, or are not similar to Abercrombie & Fitch look are not within the accepted definition of what constitutes the ANF-prescribed version of New England prep school/Ivy League cool and portray an inconsistent image of the brand.

96. Abercrombie & Fitch and abercrombie has consistently offered certain styles of their clothes across certain core apparel categories (i.e. polo shirts, t-shirts, sweaters, jeans, hoodies, etc.). There may be color and trim variations from year to year, but overall, there is a defined set of clothing styles that represent "the Abercrombie look." These established apparel categories and styles serve as immediately recognizable cues for the Abercrombie brand, so that tweens and teens are able to associate these items of

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[99] Piper Jaffray "Taking Stock with Teens" Semi-Annual Survey, 2008, see http://www.piperjaffray.com/1col.aspx?id=287&releaseid=1127632

clothing and styles with the brand, even outside of Abercrombie & Fitch and abercrombie stores.

97. As noted above, an ANF Models primary job duty is to "model" the ANF brand. ANF's Look Policy prohibits facial hair, provocative clothing, the wearing of headwear (be it caps, hats or headscarves), and excessive jewelry because they will detract from the Abercrombie brand identity, and distract consumers thereby detracting from the brand.

98. While Abercrombie and abercrombie sell scarves, my review of the scarves offered on the brand websites and in their employee style guides indicate that these scarves are clearly of the kind meant to be worn around the neck, and not as headscarves. The Abercrombie styling guides I reviewed show clearly various outfits and looks to be worn by associates and Models, and these show how scarves should be worn by store employees. These instructions show visually and describe verbally "style scarf loosely around neck (reference form scarf styling how to)" with step by step instructions on how to style them around the neck.[100] Any detraction from this is off-brand, in the same way that any other Abercrombie-offered clothing item could be misappropriated and worn in a manner contrary to the style guide would be similarly off brand, e.g. Abercrombie clothes worn two sizes

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[100] Associate Styling Guide—Female A&F000721-725, and styling images and instructions from A&F000763-765

too small and therefore overly tight-fitting and provocative. A scarf worn around the head would never be associated with the Abercrombie brand nor "the Abercrombie look." In the same vein, if a Model were to wear formal lace-up shoes, a suit and tie, a cocktail dress, or a cowboy hat while on the job, consumers would never associate those items with Abercrombie & Fitch. Any store employee or Model wearing these off-brand looks (be it a headscarf, suit, cocktail dress, etc.) would only cause confusion to Abercrombie consumers.

99. In sum, the appearance and attitude of retail employees is greatly important to the success of the Abercrombie brand. These employees play multiple important roles for Abercrombie. They are Abercrombie's human representation of New England prep school/Ivy League cool. They help to create relevance and meaning for the Abercrombie brand in target consumers' minds, they help to engender consumer affinity and engagement with the brand, they create word of mouth through talking value, and they help to build store traffic. Because Abercrombie is such an aspirational lifestyle and identity-driven brand that is based on a real-life subculture, its store employees, above all else, are one of the most important touchpoints in conveying the Abercrombie brand to customers. It is vital that every single store employee is able to consistently portray "the Abercrombie look" and brand identity in a credible and authentic way,

and to act as aspirational New England 'cool' role models for those tweens and teens.

My opinions and conclusions are based on the evidence I have examined as of the date of this report. I reserve the right to revise my report if more information becomes available.

Executed this 10th day of Jan., 2011

/s/ ERICH JOACHIMSTHALER
ERICH JOACHIMSTHALER

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Case No. 09-CV-602-GKF-FHM

IN THE MATTER OF THE ACCUSATION OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

v.

ABERCROMBIE & FITCH STORES, INC., RESPONDENT

Dec. 10, 2010

DECLARATION OF KATHLEEN K. LUNDQUIST

I, KATHLEEN K. LUNDQUIST, declare and state as follows:

1. I am an Industrial Psychologist currently employed as President of APT*Metrics*, Inc. (APT), in Darien, Connecticut. My work experience over the past 25 years has been in the areas of Industrial Psychology and Psychometrics, focusing on the development, analysis, and validation of employee selection procedures. I have been a Fellow with the Psychological Corporation, a Summer Research Fellow with the Educational Testing Service (ETS), and a Research Associate with the National Academy of Sciences.

2. Throughout my professional career, I have extensively researched, designed, and conducted statistical analyses and provided consultation in the areas of job analysis, test validation, performance appraisal, and research design. I have performed consulting work in these areas for major corporations in the banking, financial services, retail, electronics, aerospace, pharmaceutical, telecommunications, and electric utility industries, as well as for federal, state, and local agencies and not-for-profit organizations.

3. I am licensed as a psychologist in the State of Connecticut. My qualifications are set forth in my curriculum vitae, which is attached to this report as Attachment A.

4. I have consulted with both plaintiffs' and defendants' counsel in employment discrimination cases and have testified as an expert witness in numerous such cases. I have served as an expert on selection procedure validation for both the U.S. Department of Labor and the U.S. Department of Justice, and have served as a member of the expert panel on assessment for the U.S. Department of Labor's National Skill Standards Board, chairing its Endorsement Review Panel.

5. I have also been selected to serve as a court-appointed expert to help carry out the provisions of consent decrees in employment discrimination class actions involving the FBI, Ford, Sodexo, Morgan Stanley, and Abercrombie & Fitch. I recently concluded work as a court-appointed expert in the Coca-Cola class action employment discrimination settlement,

assisting the external task force in reviewing the company's human resources practices, including the areas of job analysis and selection. A list of cases in which I have testified at trial or in deposition in the last four years is also contained in Attachment A.

6. I have been assisted in this work by Christina Norris-Watts, Ph.D., John R. Curtis, Ph.D., and Shana Simon Stukalsky, Ph.D., all Industrial Psychologists employed by APT*Metrics*. A list of professional references and documents reviewed in connection with this report are included in Attachment B.

EXECUTIVE SUMMARY

7. APT*Metrics* conducted a written job analysis and developed job-related criteria for all in-store positions under the terms of the settlement of *Gonzalez et al. v. Abercrombie & Fitch Stores, Inc.* in November 2004. This job analysis analyzed all store positions, resulted in written job descriptions, and served as a basis for developing and validating structured interviews. I have been asked to review the results of the job analysis and structured interview validation studies and to give expert opinion regarding the importance of: 1) the Appearance and Sense of Style competency, and 2) adherence to the Look Policy in the Model position.

8. The job analysis results for the Model job showed that representing the brand in one's appearance and sense of style is an essential function of the job. In other words, an essential function of the Model job is to act as a model for the brand. In so doing, Models are expected to represent the Aber-

crombie & Fitch and abercrombie brands ("Abercrombie") in their appearance and sense of style. Candidates for the Model position are selected in part on meeting the Appearance and Sense of Style requirement in the structured interview before they are hired into this position. Once hired, Models are trained on and required to adhere to the company Look Policy, which requires that they maintain their appearance in a manner that is consistent with the brand. Models are also expected to know and comply with company standards of conduct, including the Look Policy.

DESCRIPTION AND RESULTS OF THE JOB ANALYSIS FOR THE MODEL POSITION

9. In July 2005, APT*Metrics* completed a job analysis study of all in-store positions across brands, regions, and districts. The purpose of the job analysis study was to identify the work performed by employees in in-store positions, along with identifying the knowledge, skills, abilities, and other characteristics (competencies) required to perform the work. APT*Metrics* employed a multi-method job analytic approach that is consistent with relevant professional and legal standards (Equal Employment Opportunity Commission, *et al.*, 1978; Society for Industrial and Organizational Psychology, 2003; American Educational Research Association, *et al.*, 1999).

10. The job analysis study included:

- a review of documents and materials related to in-store jobs;

- site visits and interviews with incumbents and managers;
- meeting with job experts to discuss and finalize job analysis surveys;
- the administration of job analysis surveys to the population of managers, and
- the analysis of survey data.

11. The Model task and competencies surveys were sent to the population of Store Managers (N=794), of which 646 completed the survey, for a response rate of 81%. Store Managers rated Model tasks on how important that task is to the job and how frequently incumbents perform the task.

12. Of the 90 tasks on the Model survey, three are relevant to upholding or adhering to the Look Policy or other Abercrombie policies and procedures. Table 1 presents the results for these six tasks. A job task was determined to be either Important or Critical to the job based on mean importance ratings of 2.00-2.49, or 2.50 or greater, respectively. As can be seen in Table 1, job analysis participants rated all three tasks relevant to the Look Policy as critical. Further, the frequency ratings show that the relevant tasks are performed frequently. Specifically, the mean frequency ratings are all greater than 4.0, indicating that they are performed "Once or Twice A Day."

Table 1: Mean Task Importance and Frequency Ratings

Task Area	Task	Importance (0-3)	Frequency (1-5)
Represents the Brand	1. Adheres to Look Policy guidelines in personal appearance that reflects the Abercrombie lifestyle.	2.96 Critical	4.68 More than 2 times per day
Represents the Brand	2. Uploads and shares Abercrombie visions and standards.	2.86 Critical	4.67 More than 2 times per day
Represents the Brand	3. Creates a fun and engaging environment throughout the store.	2.96 Critical	4.90 More than 2 times per day

Importance Rating: 0 = "Not Performed", 1 = "Minor Importance", 2 = "Important", 3 = "Critical"
Frequency Rating: 1 = "Less Than Once a Month", 2 = "Monthly", 3 = "Weekly", 4 = "Once or Twice A Day", 5 ="More than Twice A Day"

13. Store Managers also rated competencies for the Model job. They provided two ratings: how important the competency is for the job and whether or not the competency is required upon entry into the job. Of the 55 competencies in the job analysis survey, six are particularly relevant to the Appearance and Sense of Style standard and the Look Policy. Table 2 presents the results for these six competencies. A competency was determined to be either Important or Critical based on a mean importance rating of 2.00-2.49, or 2.50 or greater, respectively. In addition, a mean entry requirement rating of .67 or greater indicates a competency is requisite to the job prior to hire. As can be seen in Table 2, job analysis participants rated all six competencies as critical. Five of the competencies were rated as required at time of hire; one was deemed to be learned on the job.

Table 2: Mean Competency Importance and Required Upon Entry Ratings

Competency Area	Competency	IMPORTANCE (0-3)		REQUIRED UPON ENTRY (0,1)	
Fashion Style	1. Appearance: Ability to present oneself attractively, appear well groomed,	2.87	Critical	0.96	Yes

	and wear attractive, stylish, fashionable clothes, hairstyle, and accessories that are consistent with the Abercrombie brand. This includes having personal attractiveness that positively fits Abercrombie brand and exhibits personal appeal.				
Fashion Style	2. Passion for the Brand: The willingness to embrace and perpe-	2.77	Critical	0.72	Yes

	tuate passion for the Brand, including showing enthusiasm for the Brand and taking pride in the store.				
Fashion Style	3. Aspiration to Succeed: The ability to learn, accept, proactively encourage, and promote the company's mission, values, standards, and culture among customers, co-workers, and management.	2.57	Critical	0.69	Yes

Sales Skills	4. Influence Aspiration: The ability to influence customers' aspiration to dress in Abercrombie brand clothing. This includes wearing clothes that fit the brand and setting the example of the brand lifestyle.	2.75	Critical	0.69	Yes
Policies and Procedures	5. Conduct: Knowledge of and willingness to comply with Abercrombie standards of conduct (e.g., appearance	2.87	Critical	0.72	Yes

	policy, no fraternization policy, smoking and drug policies).				
Policies and Procedures	6. Compliance: Knowledge of federal, state, and local regulations, and Abercrombie policies and procedures (e.g., loss prevention policy, discrimination policy, harassment and respect policies).	2.77	Critical	0.58	No

Importance Rating: 0 ="Not Important", 1 ="Minor Importance", 2 ="Important", 3 ="Critical"

Required Upon Entry Rating: 0 ="Not Required At Time of Hire/Entry Into Job", 1 ="Required At Time of Hire/Entry Into Job"

14. It is clear from Table 1 that representing the brand is a critical part of the Model job. Representing the brand involves following the Look Policy; including proper dress, as defined by Abercrombie. In addition, Table 2 indicates that fashion style is a critical competency for Models. Abercrombie defines fashion style as appearance that "positively fits [the] Abercrombie brand"; having passion for the brand; and encouraging co-workers and customers to promote the "company's mission, values, standards, and culture" Also important to the Model job is to influence the aspiration of customers to dress in Abercrombie brand clothing, which involves "wearing clothes that fit the brand and setting the example of the brand lifestyle" Clearly, an important part of this job is not just selling Abercrombie clothes, but acting as a model for the Abercrombie style.

15. Based on the results of the job anlaysis, compliance with all Abercrombie policies, including the Look Policy, is critical for the job. Excerpts from the 2006 Look Policy are presented below:

> As an associate of Abercrombie & Fitch, you should always strive to project a professional image that is consistent with our reputation as the best in the fashion industry.
>
> We realize that your manner of dress and grooming habits are highly personal and subject to your own tastes and preferences. We wish to respect your individuality and still maintain a consistent level of dress and grooming that represents what people expect from Abercrombie & Fitch.

Expectations of all associates: Represent the Abercrombie & Fitch brand with natural classic American style.

Clothing and Footwear: Clothing and footwear style should be similar to the Abercrombie & Fitch brand. Clothing should also be consistent with the season Clothing worn at work should not be too informal (e.g., no gym shorts). Clothing choices should not be provocative (e.g., tanks should be worn with an undergarment. All clothing and footwear choices should reflect what a customer would expect to see when they think about the Abercrombie brand.

Caps: Caps are not allowed to be worn on the sales floor.

Compliance: Every associate and Management Team Member is responsible for following the A&F Look Policy All A&F associates and Managers are covered by the policy. Associates who do not met the A&F guidelines, will be informed of the specific areas(s) of non-compliance and told that the guidelines must be met immediately. Appropriate disciplinary action will be taken to ensure compliance with the policy, up to and including termination of employment.

16. In other words, wearing clothes that fit the Abercrombie brand is critical for the Model position. Determining the specific clothing that fits the Abercrombie brand, and the clothing that does not fit the Abercrombie brand, is up to the discretion of Abercrombie.

STRUCTURED INTERVIEW VALIDATION RESULTS FOR THE MODEL POSITION

17. Based on the results of the job analysis, APT*Metrics* developed and validated structured interviews. We identified key competencies that are important and required at time of hire for the Model position, and combined similar competencies into broader interview competencies.

18. Development of the structured interviews for the Model position included developing Lead and Probe questions, as well as behaviorally anchored rating scales (BARS) for each interview competency. Rating scales provide interviewers with the ability to distinguish different levels of performance in a reliable, structured, and quantitative manner, increasing the consistency and accuracy of the ratings made. APT*Metrics* developed evaluation standards for the *Outstanding, Meets Expectations*, and *Unacceptable* points on the rating scale to calibrate interviewers' ratings of candidate responses and to help ensure that interviewers were using rating scales consistently.

19. APT*Metrics* then validated the structured interviews using a content validation approach. To obtain content validation evidence for the structured interviews, APT*Metrics* consultants facilitated focus groups with job experts who had thorough knowledge of the store positions. Job experts reviewed both the questions and the evaluation standards for job relevance and clarity, and refined them as necessary.

20. One of the competencies validated for the Model position is the Appearance and Sense of Style competency. This competency is defined as:

> The ability to present oneself attractively, appear well groomed, and wear attractive, stylish, fashionable clothes and hairstyle, make-up, and accessories that are consistent with the Abercrombie brand. This includes having personal attractiveness that exhibits personal appeal and wearing clothes that fit the brand and setting the example of the brand lifestyle.

21. Table 3 presents the Appearance and Sense of Style Competency evaluation standards.

Table 3: Behavioral Standards for the Appearance and Sense of Style Competency

Behavioral Standard	Performance Level
A. Has exceptional personal attractiveness that is classic, natural, diverse	Outstanding
B. Spends time and effort into presenting oneself attractively and is impeccably well groomed	Outstanding
C. Wears exceptionally attractive, stylish, fashionable clothes and hairstyle, make-up, and accessories that enhance the	Outstanding

Abercrombie brand and brand lifestyle	
D. Had personal attractiveness that is classic, natural, diverse	Meets
E. Is well groomed	Meets
F Wears attractive, stylish, fashionable clothes and hairstyle, make-up, and accessories that are consistent with the Abercrombie brand	Meets
G. Personal attractiveness is below expectations, is not classic, natural, diverse	Below
H. Is unkempt or not well groomed, and does not seem to care about own appearance	Below
I. Does not wear attractive, stylish, fashionable clothes and hairstyle, make-up, and accessories; or wears clothes that are inconsistent with the Abercrombie brand	Below

22. As part of the interview validation, job experts assessed the extent to which each interview competency linked to the eight task areas identified in the job analysis. This linkage ensures that the competencies relate to the tasks performed in the Model job. Linkages indicated that Appearance and Sense of Style relates to "Represents the Brand" tasks as well as six additional task areas, including Customer Experience. This indicates that it is critical that Models maintain an appearance and sense of style that reflects and represents the Abercrombie brand. These data show that this competency is important for representing the Abercrombie brand, as well as enhancing the customers' shopping experience.

CONCLUSION

23. Results of the job analysis and the structured interview validation indicate that adhering to the Appearance and Sense of Style competency, as well as adhering to and upholding the Look Policy are important or critical to the Model job. The evidence is summarized below:

- Each task related to the Look Policy or other Abercrombie policies and procedures was rated as important or critical to the job;
- Each task related to the Look Policy or other Abercrombie policies and procedures was rated as frequently performed;
- Three job analysis competencies related to the Look Policy or other Abercrombie policies

and procedures were rated as important or critical to the job;

- Appearance and Sense of Style was validated and included in the final interview for the Model position;
- The evaluation standards for Appearance and Sense of Style were validated for the Model position; and
- Appearance and Sense of Style relates to important task areas for the Model position.

24. It is my opinion that it is both critical to the job and an essential function of the job of Model at Abercrombie to maintain an appearance and sense of style consistent with the brand. It is also my opinion that it is critical to the job of Model at Abercrombie to comply with standards of conduct including the Look Policy. Compliance with the Look Policy includes, but is not limited to, wearing clothing consistent with the Abercrombie brand. Task and competency evidence obtained in the job analysis and structured interview validation further supports the importance of the appearance and sense of style standard and adherence to the Look Policy for the Model position.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Case No. 09-CV-602-GKF-FHM

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PLAINTIFF

v.

ABERCROMPIE & FITCH STORES, INC., AN OHIO CORPORATION, D/B/A ABERCROMBIE KIDS, DEFENDANTS

Feb. 22, 2011

DEPOSITION OF JOHN L. ESPOSITO

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[38]

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Q. So to kind of clarify or summarize what you just said, your view is that the Quaran does not require an hijab?

A. My interpretation as a scholar.

Q. As a scholar. There are other scholars who take a different view, they believe that the Quaran does require an hijab.

A. Both; other scholars and particularly Muslim religious scholars, many; but there are many who disagree with that interpretation.

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A. In Islam it began as a religious and cultural practice. The thing about the interaction between religion and culture is that religious traditions will take over a cultural practice; but when they take it over, it will then take on a religious motif. That clearly occurred with within Islam so that early on you had Muslim religious communities that clearly, in defining modesty, mandated some kind of veiling; and that continues today. That is in the case that we're discussing. And in many cases, we'll use the term "hijab" and then talk about a head scarf. The fact is that in some parts of the world what that means is that a woman will just cover her head, you know, by a piece of cloth, India and Pakistan. And for many, they do that because they see that as a religious prescription. For others, they see that as part of their culture, there is a cultural context. So you can—it really depends on the woman.

Q. So for some women veiling may be a religious practice. For others it may be a cultural practice?

A. Correct.

Q. And what you are saying is that you have to look at them on a case by case basis?

A. Exactly.

Q. You write in your report that veiling of women [42] did not become widespread in the Islamic empire until three or four generations after the death of Mohammed?

A. Correct.

Q. So, again, well, how did that—do you know how that occurred?

A. Not really. I mean, I know the phenomenon occurred, but no.

Q. And you've also written veiling was originally a sign of honor an distinction?

A. That's right.

Q. As opposed to now. What is it a sign of now?

A. Well, now it is a sign of—it could be multiple things. It is a sign of, clearly, modesty, religiosity; it is a sign of sending a signal. For example, in Egypt women have returned—in recent decades—returned to wearing the veil, the younger generation. For many of them it is an assertion of—there are multiple meanings—but some assertion of their modesty and particularly in public. In other words, vis-a-vis saying to the society and to men who might wish to grope them, etcetera, which is a phenomenon that exists among some Italians and some Egyptian. I am saying that as an Italian. What they are really saying is this is the kind of woman I am. And interestingly, the Quaran has the same modesty requirements that em-

phasize modesty for men. So when you, [43] for example, look at the way an Egyptian male might dress compared to a Saudi male, Saudi males will be completely covered, long arm sleeves, Egyptian men can be very devout and would be wearing an Izod or perhaps even an Abercrombie short sleeve shirt.

Q. And, again, that is a culture distinction?

A. Religious for some and cultural for others.

Q. How can it been religious for some and cultural for others?

A. Because people can engage in wearing something—and it really is, the question is, what is their motivation. In other words, particularly, I put it this way: When you live in a culture where most people engage in any practice that's commonly accepted, then most people will, for example, dress a certain way. Then the question that you have, if you really try to understand why, is, are they doing it primarily because it's religiously motivated, or for some of these people is it because this is the culture, this is the way people dress. A classic example is a group of Yemenite Jewish women who emigrated outside the country and they dress exactly as a Yemenite Muslim woman would including a face mask, even though it is not required in Judaism. In their case it is cultural. For a Yemenite Muslim woman, it's probably, she sees it as religious and cultural.

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Q. And in fact all of the pictures of the hijab that are attached to your report could be consistent with Islam?

A. Yeah.

Q. And even if there was a picture of a woman not wearing a hijab, she could be consistent with Islam?

A. That's right.

Q. It's really a matter of interpretation?

A. It depends on—you are absolutely right. It's a matter of interpretation and often not completely—here we have great diversity in America because we have so many different people of different Muslim backgrounds. * * *

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Q. Do some women wear the hijab as a source of nationalistic identity?

A. In countries where it's been like national dress, yes.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Case No. 09-CV-602-GKF-FHM

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PLAINTIFF

v.

ABERCROMBIE & FITCH STORES, INC., AN OHIO CORPORATION, D/B/A ABERCROMBIE KIDS, DEFENDANTS

[Mar. 16, 2011]

DEPOSITION OF CHAD MOOREFIELD

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[5]

CHAD W. MOOREFIELD,

being by me first duly sworn, as hereinafter certified, deposes and says as follows:

EXAMINATION

BY MS. SEELY:

Q. Good morning, Mr. Moorfield.

A. Morning.

Q. My name is Barbara Seely, and I am an attorney for the Equal Employment Opportunity Commission. As you know, we are the plaintiffs in the case of EEOC versus Abercrombie & Fitch Stores, DBA Abercrombie Kids.

We've asked you to come here today for two reasons: First of all, you've been designated as a Rule 30(b)(6) deponent. And, secondly, we want to ask you some questions because we think you may have some information that's relevant to the case.

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Q. So is there something more important about the appearance competency than the other two competencies that were evaluated by the interviewer?

A. Yes.

Q. What is that?

A. Appearance and sense of style.

Q. Why, in your view—strike that.

Why, in your understanding, is the appearance competency given more weight in evaluating applicants?

A. I think that is—the model position is our advertising for our company. We don't do a lot of print. We don't do radio. We don't do television. We uphold a certain brand image that people come to expect, and we think the first part of our advertising, or the

show, as we would call it, would be that somebody would walk in and see a great-looking person with a sense of style in our store.

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Q. What is it about caps that are too informal for the casual, informal brand that Abercrombie projects?

A. I would describe casual and classic as somebody that's more preppy versus sloppy. It would be a cap that would be a little bit—I just hopped out of bed and didn't take a shower, threw my hat on to go somewhere, threw on a big sweatshirt to go somewhere, versus somebody that had a sense of style that was casual, which wasn't trying to dress up, but was trying to have some style when they went out.

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[156]

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Q. And at the time that this Look Policy was in effect, and I want to limit it now to June of 2008—June, July of 2008—were other kinds of headwear allowed under The Look Policy?

A. No.

[157]

Q. And why is that?

A. I mean, it would—I mean, we would consider it as distracting; so it's more about our clothes. It's not a product of ours, so we would want somebody to—if it's casual and classic, we would want somebody to notice that product that's representative of casual and classic.

Q. So you said that, "Any other kind of headwear wouldn't be a product of ours."

A. Yeah.

Q. Does that mean that, under The Look Policy, headwear—strike that.

Does that mean that, under The Look Policy, models would not be allowed to wear items of clothing that Abercrombie didn't sell?

A. I mean, The Look Policy states that you can wear merchandise that is not ours, as long as it is representative of our style and fit and doesn't bear a logo that you would identify if somebody walked up and saw it.

Q. So if Abercrombie didn't sell headwear other than caps, under The Look Policy, that headwear wouldn't be permitted?

A. Correct.

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[208]

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Q. Okay. And what, if anything, have you—do you do to determine whether there's a correlation

between that poor score on properly dressed and a drop in sales?

A. I mean, we talk about that, if a store has had multiple ls over multiple times, and you've looked at some of the other data, and it's showing positive, whether that's shrink or business or promos or weather, or whatever those things are, you try to make a correlation. You're guessing essentially. You can't always be 100 percent sure, but you use your best knowledge to say that is a factor. We believe that in our core values that people that aren't wearing our merchandise, when you come into a store, then you're not representing the brand; therefore, you're representing other brands, or how you're representing our brand is not how we want to wear it, which is a style thing for us which helps us sell our clothes.

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[217]

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Q. Am I correct that the store experience is the way that you advertise the brand?

A. Yes.

Q. And one of the aspects of the store experience is the appearance of your models; correct?

A. Yes.

Q. But there's other aspects to store experience as well, aren't there?

A. Correct.

Q. Tell me what those are.

A. It could be friendliness. Are you helping people? Store experience could be how the music's going. What you hear. What you smell. We spritz our stores. What you see visually that's happening. All of those things play a part of it.

Q. So the store experience that you've described, you believe that that has worked, and that, as a result, Abercrombie & Fitch has expanded over the years?

A. I believe that. Yes.

Q. My question is not how the properly dressed category has operated to cause Abercrombie to [218] go to 1,100 stores. My question is: How do you know, absolutely, because I think you said that a low properly dressed score would have an adverse impact on the sales of a particular store, as opposed to all the other pieces of the store experience?

A. I don't have specific experiences; but within my 15 years, I have seen stores or managers that do a poor job of enforcing our Look Policy and have seen low sales scores because of it.

Q. How do you know that those low sales scores were just because the managers did a poor job of enforcing The Look Policy as opposed to some other aspect of managing the store?

A. I took the knowledge that I had at those times and the data I had at those times, and that's the conclusion I came up with.

Q. What data did you have at those times?

A. The same stuff I rattled off to you.

Q. The stuff you rattled off to me was?

A. It could be shrink. It could be data on our EUSR system, which is filling. It could be turnover report. It could be hours usage. It could be previous audit scores that I had completed in stores, depending on what level I was. It could be [219] staffing numbers. It could be retention. It could be diversity in the store. If I thought about it, there would probably be a lot more.

Q. So are you saying that in the stores where you've had experience with managers that do a poor job of enforcing The Look Policy, that you have considered all of these other aspects, shrink, USER, turnover, et cetera, and that you have absolutely determined that the reason that the sales of that store declined was because the manager did a poor job of enforcing The Look Policy and nothing else?

A. Yes.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Case No. 09-CV-602-GKF-FHM

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PLAINTIFF

v.

ABERCROMBIE & FITCH STORES, INC., AN OHIO CORPORATION, D/B/A ABERCROMBIE KIDS, DEFENDANTS

Mar. 18, 2011

DEPOSITION OF AMY YOAKUM

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[4]

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AMY YOAKUM,

being by me first duly sworn, as hereinafter certified, deposes and says as follows:

EXAMINATION

BY MR. LEE:

Q. Ms. Yoakum, could you state your name for the record, please?

A. Amy Yoakum.

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[63]

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Q. Okay. And I guess my question is: How would it cause an undue burden if Samantha Elauf had requested an accommodation?

A. We have a—the company has a Look Policy, and The Look Policy's purpose is to support our marketing, our branding, if you will. Abercrombie & Fitch is a company that's grown very quickly, and primarily it's because we don't advertise. Our marketing is done in the store through our models and employees, our store experience and creating loyalty amongst our customers. Our customers come into the stores. They experience the smell and the sound and the models and the images that we produce. And so if we accommodate every request for accommodation that we receive, that could negatively impact that store experience for our customers.

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[65]

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Q. Are any exceptions to The Look Policy [66] causing an undue burden on Abercrombie today?

A. There are exceptions to our Look Policy that we have in the stores. They're not common. We evaluate them on a case-by-case basis. We are careful to

accommodate when it's reasonable. I'm not aware any of particular ones. I've granted some because we want to review each situation on its—each request that comes into H.R., we take very seriously. We evaluate it, and if we can accommodate, we try.

However, I go back to my original statement that we have to be careful in our stores about the brand and our marketing. Every exception that we allow has an impact on our store experience.

Q. And how do you know that?

A. Well, Abercrombie & Fitch is successful because of its store experience. Our customers are loyal because of how different we are from every other retailer out there. They continue coming back to us for that experience. They aspire to be like the individuals we hire, and so we are committed to maintaining that standard in our stores and making sure that store experience is consistent from store to store.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

No. 09-CV-602-GKF-FHM

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PLAINTIFF

v.

ABERCROMBIE & FITCH STORES, INC., AN OHIO
CORPORATION, D/B/A ABERCROMBIE KIDS, DEFENDANT

Mar. 31, 2011

DEPOSITION OF FARISA SEPAHVAND

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[3]

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Q. Could you state your name for the record?

A. Yes. Farisa Sepahvand.

Q. And could you spell your first and last name?

A. It's F-a-r-i-s-a; last name, S-e-p-a-h-v-a-n-d.

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[23]

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Q. How do you know Samantha?

A. We met each other back in tenth grade and she's currently my best friend, has been my best friend for the past five years.

Q. Let me go back. When did you met Heather Cooke?

A. Heather came to the company—I feel like the end of 2007. She came around Christmastime, so I feel like it was December 2007 or January 2008.

Q. Okay.

A. I remember she came from California and she was like the hype because everyone was like, "Oh, we have a new manager from California."

Q. So the first time you met her was when she became assistant manager at the Woodland Hills mall store?

A. Yes.

[24]

Q. Did you socialize with Heather outside of work?

A. Occasionally.

Q. Now at this point, Samantha was your best friend?

A. Yes.

Q. Did—when you saw Heather outside of work, were you with Samantha?

A. I think maybe one or two times I was with Samantha, but it was at the mall, we were shopping.

Q. Were you working?

A. No, I was not.

Q. Okay. Was Heather working?

A. No, she was not.

Q. And were the three of you shopping together?

A. No.

Q. Did you and Sam come to the mall together and met Heather?

A. No, we came to the mall together, but we saw Heather at the mall.

Q. Okay. And to your knowledge, was that the first time that Heather and Samantha met?

A. Samantha would come into the store because she also worked at the mall, she worked at Limited [25] Too, so they knew who she was just because she would come into the store on her breaks. So they didn't personally meet, but they had knowledge of who each other was.

Q. Because she was coming in as your friend?

A. Correct.

Q. Okay. At some point, did you formally introduce Samantha to Heather?

A. Yes.

Q. Do you recall when that was?

A. The time at the mall that we saw her.

Q. Okay. Now that—do you recall when that was?

A. No.

Q. Okay. Well, if—you testified earlier that you thought Heather arrived at the store in late 2007, and Samantha's interview at the Abercrombie Kids store was in the summer of 2008?

A. Yes.

Q. Do you recall how—how much time the introduction preceded the interview by?

A. No.

Q. Okay. At this time that the three of you met in the mall, was there any discussion of Samantha coming to work for Abercrombie?

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[30]

Q. Okay. So you described the conversation with Kalen about Samantha. Do you—do you know if Kalen ever met Samantha?

A. They—it was the same thing with Heather, like they just knew each other from her coming in all the time.

Q. And did you approach Kalen?

[31]

A. Yes.

Q. Okay. And what did you ask him?

A. I just asked him, before she had applied, if it was okay, considering she also had a headscarf. I had also told both mangers—both Kalen and Heather—that she had worked for Limited Too for—I feel like it was a year?—for a really long time, and they really liked her there, and that she was just looking for a job at the time, and that she was reliable. I mean, they haven't had issues with her at her previous jobs before that.

Q. So you knew or thought that the look policy may be a problem because she wore a headscarf?

A. Say that again.

Q. When you approached Kalen and asked him is it okay if she applies because she wore a headscarf, you understood that the look policy did not permit headwear?

A. No, I didn't understand that. I was sort of iffy about it because when the interview you, I've heard that they ask what's the definition of diversity, so I thought that it would be okay, but then at the same time I wasn't exactly sure, so I asked him to make sure.

[32]

Q. Okay. Did you look at the policy itself?

A. Not that I remember.

Q. Okay. And what did Kalen tell you, as best you can remember?

A. He told me, "Yeah, I think it should be totally okay. I worked with someone previously that was Jewish and he wore a yarmulke, and his yarmulke was white."

Q. Anything else?

A. Just that—he said that she was really pretty and, "I don't see what the problem would be, especially if she didn't wear a headscarf that was black."

Q. Why was the color of the headscarf important?

A. Abercrombie doesn't permit people to wear black.

Q. Did you—do you recall saying anything else to Kalen in this conversation?

A. No, just that I was going to tell her that it would be okay and she should apply.

Q. Okay. And did you?

A. Yep, yes.

Q. You told Samantha to apply?

A. Yes.

[33]

Q. Okay. Did you tell her about the look policy?

A. I told her that she just wasn't allowed to wear black.

Q. Did you tell her anything else about the look policy before she applied?

A. No, I'm pretty sure she knew.

Q. How—how—how do you—why do you think she knew?

A. It's kind of common sense. I mean, when you go in the store, everyone's like wearing polos and regular jeans and white Converse. She was in there all the time so she would see the way that we dressed.

Q. Okay. So the only specific instruction you gave her was "Don't wear black"?

A. Uh-huh, yes.

Q. Did you talk to her at all about the headscarf?

A. Yes.

Q. What did you say?

A. Don't wear a black headscarf.

Q. And that was it?

A. Yes.

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